BENTSI-ENCHILL LETSA & ANKOMAH

Ghana's 2024 Legal & Regulatory Outlook

Content

Energy, Extractives & Infrastructure

Introduction

Ghana's Minister for Finance in the 2024 Budget Statement and Economic Policy (the 2024 Budget), stated that 2023 was a year of economic stabilisation and recovery for the country following government's negotiation and commencement of an International Monetary Fund (IMF) Extended Credit Facility (ECF) programme, debt restructuring, among other reforms and programmes.

Notable events in the energy and extractives sectors for 2023 included the relocation of the Ameri power plants to Kumasi; completion of phase 1 of the construction of the Early Power Project; granting of the country's first lithium mining lease; introduction of the Gold for Oil (G4O) policy; the pouring of first oil from the Jubilee South-East area offshore Ghana, which is expected to add 300,000 barrels of oil per day (bopd) to production from the Greater Jubilee field, resulting in an aggregate production of over 100,000 bopd; the acquisition by Africa Finance Corporation (AFC) of Aker Energy's interest in the Deep Water Tano/Cape Three Points (DWT/CTP) block; government's approval of the plan of development in respect of the Pecan discovery in the DWT/CTP block; and the plugging of all 6 wells designated for the decommissioning of the Saltpond oil field.

In the infrastructure sector, several construction projects and programmes relating to sanitation and water resources, works and housing, roads and highways, railway development, communication and digitalisation, and transport, were either commenced, progressed or completed. These included the:

- launching of the electric vehicle policy;
- development of a water safety plan by the Ministry of Sanitation and Water Resources;
- commencement of the implementation of the National Rental Assistance Scheme; progression with phase 2 of the Tema Motorway Roundabout project;
- completion of several priority infrastructure projects under the Sinohydro deal; and
- construction of an oil and gas services terminal to serve as a one-stop shop logistics support base for offshore oil and gas operations as part of the strategic development of the Takoradi Port.

In terms of legislation, the laws relevant to the energy, extractives and infrastructure sectors that came into force in 2023 are:

Value Added Tax (Amendment) Act 2023 (Act 1107) – amended the Value Added Tax Act, 2013 (Act 870) to

- provide for a 5% flat rate on the rental of commercial premises other than commercial rental establishments;
- provide for a 5% flat rate of tax on the supply of immovable property by an estate developer;
- extend the zero tax rate for locally manufactured textiles and vehicles;
- introduce a zero rate for locally manufactured sanitary towels;
- waive the tax on electric vehicles for public transportation;
- review the exemptions for specified goods and services and provide for related matters;

Stamp Duty (Amendment) Act, 2023 (Act 1109) - amended the Stamp Duty Act, 2005 (Act 689) to review the stamp duty rates on specified instruments to reflect current economic realities;

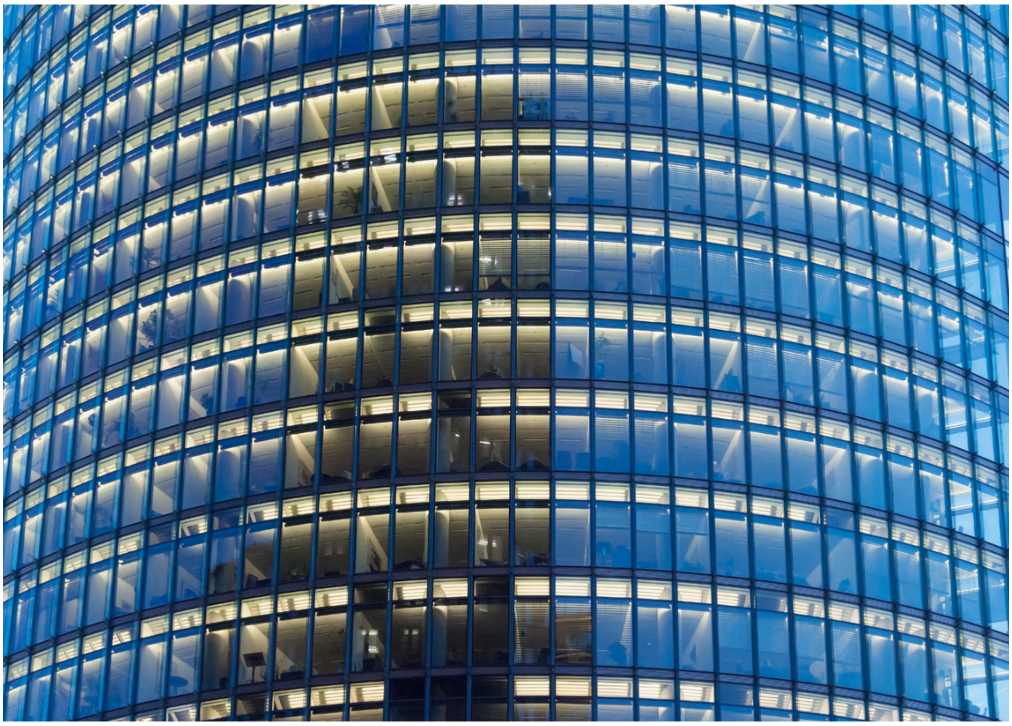
Income Tax (Amendment) Act, 2023 (Act 1094) - amended the Income Tax Act, 2015 (Act 896) to

- revise the rates of income tax for individuals and introduce an additional income tax bracket;
- introduce a withholding tax rate on the realisation of assets and liabilities and on winnings from lottery;
- revise the treatment of foreign exchange losses and unrelieved losses;
- revise the upper limits for the quantification of motor vehicle benefits and provide for related matters;

Income Tax (Amendment) (No.2) Act, 2023 (Act 1111) - amended the Income Tax Act, 2015 (Act 896) to revise the rates of income tax for individuals;

Growth and Sustainability Levy Act, 2023 (Act 1095) - imposed the Growth and Sustainability Levy to raise revenue for the growth and fiscal sustainability of the economy and to provide for related matters. The levy is imposed on upstream and downstream petroleum companies, mining companies, support services companies, and all other businesses; and

Emissions Levy Act, 2023 (Act 1112) – imposed an emissions levy on carbon dioxide equivalent emissions from internal combustion engine vehicles and specified sectors including the construction, manufacturing, mining, oil and gas, and electricity and heating sectors.



Outlook & Projections

Given the modest levels of recovery experienced by the Ghanaian economy in the past year, the government has indicated that it intends to launch a recovery, stability, and growth program in 2024. We expect this agenda to largely influence economic activities this year, notably in the energy, extractives, and infrastructure sectors. However, we anticipate that the upcoming 2024 general elections will have a significant impact on government spending for the year.

Additionally, we would expect that the ongoing IMF programme would significantly impact the relevant aspects of the economy such as production, distribution and consumption of goods and services in the energy, extractives and infrastructure sectors, as would the global efforts at energy transition, as was noted in our outlook for 2023.

Our outlook and projections for 2024 are discussed under commercial and legal/regulatory/policy subheadings.

Commercial

Renewable Energy Initiatives

Following the signing of Ghana's first mining lease for lithium exploitation, Atlantic Lithium expects to make the mine operational within 24 months of Parliament's approval. Parliament is expected to ratify the mining lease in the course of the year, to pave the way for the development of the mine.

Commencement of Exploration Activities in the DWCTP Block

On the sidelines of the COP28, the government announced that GOIL Upstream Ghana Limited (GOIL) and Planet One Group had signed a farmout agreement and joint operating agreement in connection with the assignment of interests in the Deepwater Cape Three Points (DWCTP) block to Planet One Group. Planet One Group and GOIL are expected to start exploration activities as soon as the deal is approved by the government in fulfilment of their contractor duties under the petroleum agreement. Following ExxonMobil's departure from the project, there have been no exploration activities on the block . Planet One Group's acquisition of stakes and anticipated investments in the block is good news for the industry, which has begun to experience diminishing levels of production.

Combination of the Jubilee and TEN Gas Sales Agreements

Upon completion of the negotiation of the deal terms, the Jubilee partners are expected to execute a gas sales agreement with GNPC to combine the gas sales agreements in respect of the associated gas productions from the Jubilee and Tweneboa Enyenra Ntomme (TEN) fields. The combined gas sales agreement would require an amendment and update to the gas utilisation plans in the existing plans of development for the Jubilee and TEN fields. A successful conclusion of the combined gas sales agreement would ensure that Ghana meets its fuel needs for power generation and other industrial purposes.

Development of the Pecan field

Following the AFC's acquisition of major stakes in the DWT/CTP block which houses the Pecan discovery, an updated plan of development and operation was presented and approved by the government. The development of the field is, therefore, expected to commence leading to a projected pour of first oil in 2026. Given the recent dwindling levels of investment and activity in greenfield projects in the industry, the development of the Pecan field is expected to revitalise and bring a much-needed boost to the industry.

Commencement of Infrastructural Projects

The government's intended areas of focus for infrastructure development include water resource management; management of protected areas; coastal and marine erosion; provision of transport infrastructure; information and communication; construction industry development; drainage and flood control; infrastructure maintenance; rural and urban development management; and disaster management.

Affordable Housing Projects

It is expected that the Ministry of Works and Housing will complete administrative processes for the commencement of work on the National Affordable Housing Project at Dedesua in the Ashanti Region. Furthermore, the government may provide free unencumbered land and infrastructure at the site while procuring construction companies to build and sell the housing units to members of the public.

The Dedesua project will complement ongoing affordable housing initiatives including construction of housing units under the Security Services Housing Programme, the Kpone Affordable Housing Programme, and the Revised National Affordable Housing Programme at Pokuase.

Health Sector Infrastructural Projects

Government is expected to continue ongoing projects in Ghana's health sector such as the construction of the Urology and Nephrology Centre of Excellence at Korle Bu Teaching Hospital and the construction of hospitals across the country. Following the renegotiation of the contract terms for the La General Hospital project, the project is expected to finally kick-off.

Construction of Engineered Sanitary Landfills and Materials Recovery Facility

The detailed engineering design, and environmental and social impact assessment reports of the proposed landfill in the Ga West Municipality is at the final review stage. It is expected that the proposed construction of the Engineered Sanitary Landfill and Materials Recovery (ESLMR) facility under the Greater Accra Resilient and Integrated Development (GARID) Project will commence. Similarly, we expect that the proposed construction of the ESLMR facility under the GARID Project in the Ga East Municipality will begin, in addition to the routine dredging of the Odaw basin.

Reconstruction of the Accra-Tema Motorway

The concession agreement for the reconstruction of the Accra-Tema Motorway through a public-private partnership with the Ghana Infrastructure and Investment Fund (GIIF) has been negotiated and will be submitted to Parliament for approval. The project involves strengthening 4 concrete lanes and building 6 urban highway lanes on the motorway; reconstructing the highway from Tetteh Quarshie to Apenkwa; remodeling the Tetteh Quarshie, Apenkwa, and Achimota interchanges; building new interchanges at Lashibi, Abattoir, Teshie Link, Fiesta Royale, and Neoplan junctions; and constructing pedestrian footbridges, toll plazas, and streetlights. The government is expected to invest US$380 million in the project.

Development of Tema Arterial Roads

Preparatory works are expected to commence for the development of Tema arterial roads to improve the Tema Hospital Road to serve the expanded Tema Port.

Legal/Regulatory and Policy

Tax Reforms

Expected tax reforms include the alignment of Value Added Tax (VAT) and customs laws to address the disparity in VAT on local and imported products and align the relevant VAT rates. This alignment, will hopefully ensure similar products, whether imported or locally manufactured, attract the same tax, eliminating current market distortions and promoting local manufacturing.

Programmes and Measures in the Energy and Extractives Sectors

It is envisaged that the Gold for Oil (G4O) programme, which was, on the back of the Bank of Ghana's domestic gold purchase programme, introduced to provide foreign exchange financing for the importation of petroleum products, will be scaled up to cover 50% national consumption as indicated in the 2024 Budget. However, in a contrary report, the Bank of Ghana has hinted of a phasing out of the G4O programme. According to the Bank of Ghana, the programme was introduced as a "crisis management policy" i.e., to curb the rapid rate of depreciation of the Ghana Cedi and the rising prices of fuel at the pumps. Given the recent stability levels of the Cedi, the Bank of Ghana believes the G4O programme has achieved its purpose and is no longer necessary.

Government-led programmes relating to energy access and clean energy such as the Ghana Nuclear Power Programme, Scaling-up Renewable Energy Project and the Solar Lantern Distribution Programme are expected to continue.

The government is also expected to begin the formalisation of the agreements with mining companies and mining related industries to fund and commence the rehabilitation of roads in the mining enclaves in selected communities.

Programmes and Measures in the Infrastructure Sector

The government is likely to continue with existing infrastructure programmes and measures such as the rehabilitation and expansion of water supply systems, and uncompleted projects under the National Flood Control Programme. The fortnightly water quality monitoring assessment programme is scheduled to continue, and water guards will be employed to patrol the river bodies to improve the regulation, management, and governance of the river bodies.

The National Rental Assistance Scheme, which presently covers six (6) regions, is expected to be expanded to cover ten (10) out of sixteen regions.

Policy Guidelines for Management of Public Lands

The Lands Commission is expected to issue a public land policy document which will subsequently be incorporated in a revised national land policy. The policy document will serve as a guide for the management of public lands in Ghana and review existing guidelines for regulating the acquisition, allocation or release of public lands to cater for contemporary land management and administration matters.

Legislative Reforms

Amendment of the Ghana Investment Promotion Centre Act, 2013 (Act 865)

Government proposes to amend the Ghana Investment Promotion Centre Act, 2013 (Act 865) to empower the Ghana Investment Promotion Centre (GIPC) to play a proactive role in attracting and retaining FDIs. This is to be achieved by leveraging government's initiatives to align with international best practices, following the fall in foreign direct investments (FDI) flows to Ghana as indicated in the United Nations Conference on Trade and Development World Investment Report 2023. It is expected that the proposed review of the GIPC Act will make Ghana a more competitive and attractive investment destination for FDI.

Amendment of the National Petroleum Authority Act, 2005 (Act 691)

There is expected to be an amendment to the National Petroleum Authority Act, 2005 (Act 691), to provide for the promotion, monitoring and enforcement of Ghanaian content and Ghanaian participation in the petroleum downstream industry.

Enactment of the Ghana National Roads Authority Bill

Following Cabinet's approval for the establishment of the Ghana National Roads Authority in 2023, it is expected that the Ghana National Roads Authority Bill will be submitted to Cabinet and Parliament for consideration and approval. The Ghana National Roads Authority Bill aims to establish the Ghana National Roads Authority as a unified body comprising the Ghana Highway Authority and the Departments of Urban and Feeder Roads, responsible for planning, development, maintenance and management of major roads in Ghana, including trunk, arterial, collector, district and inter-district roads.

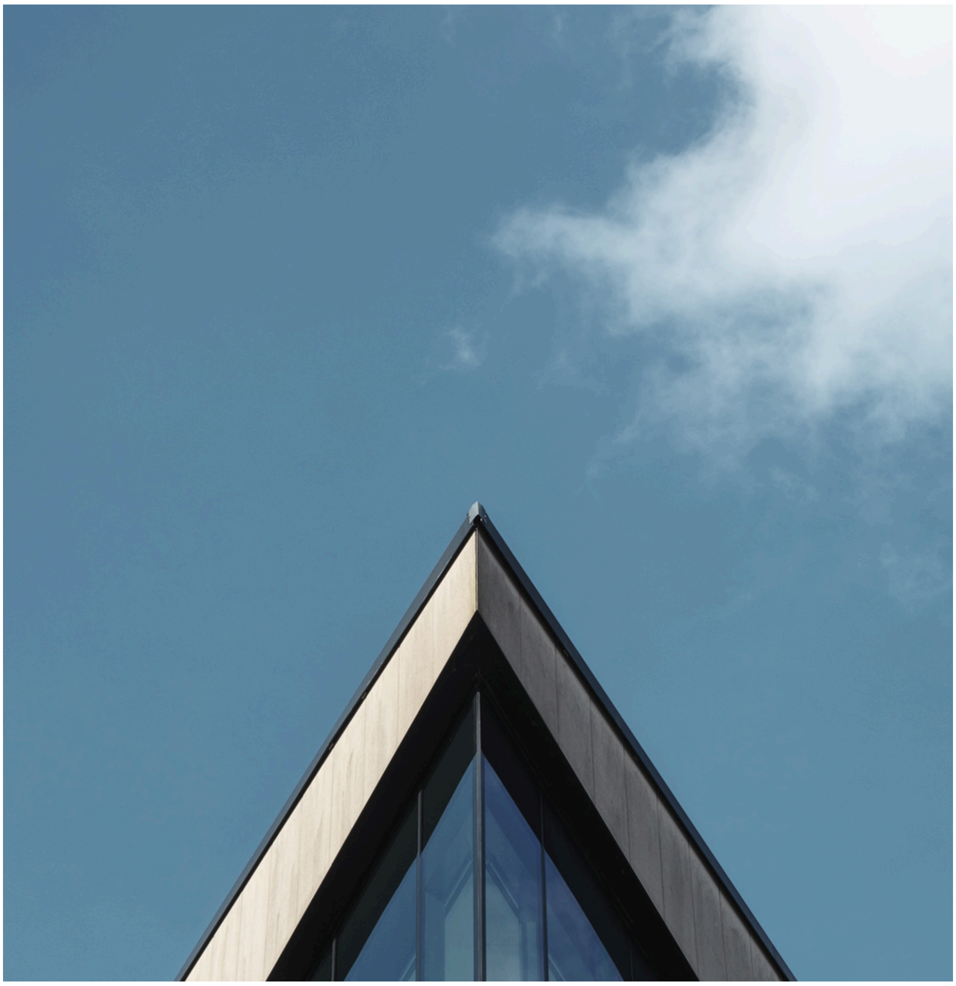
Enactment of the Rent Bill

Following Cabinet's approval of the Rent Bill, it is expected that the Rent Bill will be submitted to Parliament for consideration and approval, and passed into law. The Rent Bill when enacted will consolidate the law on rent; reform the existing enactments on rent; remove the inherent constraints on housing supply; offer incentives to stimulate private sector investment in the rental housing sector; maintain the protection of low-income and vulnerable tenants from abuse and arbitrary actions and provide for related matters.

Construction Industry

The Construction Industry Development Authority (CIDA) Bill, the Condominium Bill and the Ghana Housing Authority Bill, are yet to be passed despite the predictions in our outlook for 2023. These bills are therefore still in the pipeline and may be passed this year.

The CIDA Bill when passed will establish CIDA to regulate the construction industry and is expected to bring sanity and professionalism into the construction industry in light of the escalation of substandard buildings in the country. The Condominium Bill, when passed into law, will regulate shared ownership of common areas which has arisen due to increasing demand for development of high rise and compact properties and the need to maximise limited land space. On the other hand, the Ghana Housing Authority Bill when enacted will establish the Ghana Housing Authority to serve as a regulator in the housing sector and to plan, develop and manage housing development in Ghana.



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Financial Institutions & Capital Markets

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.

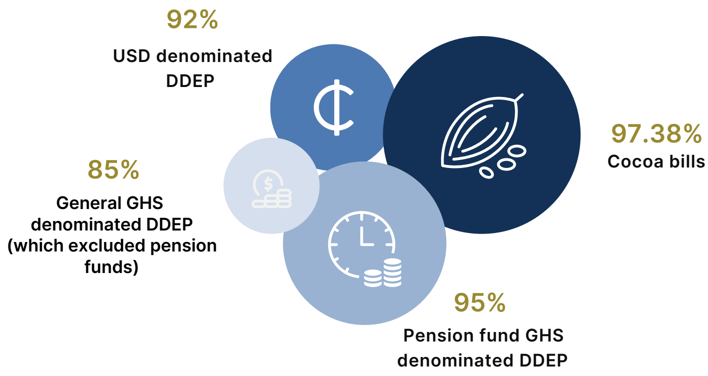
Clearly, the economy is on the mend but 2023 only marked our start on the path to recovery.

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.

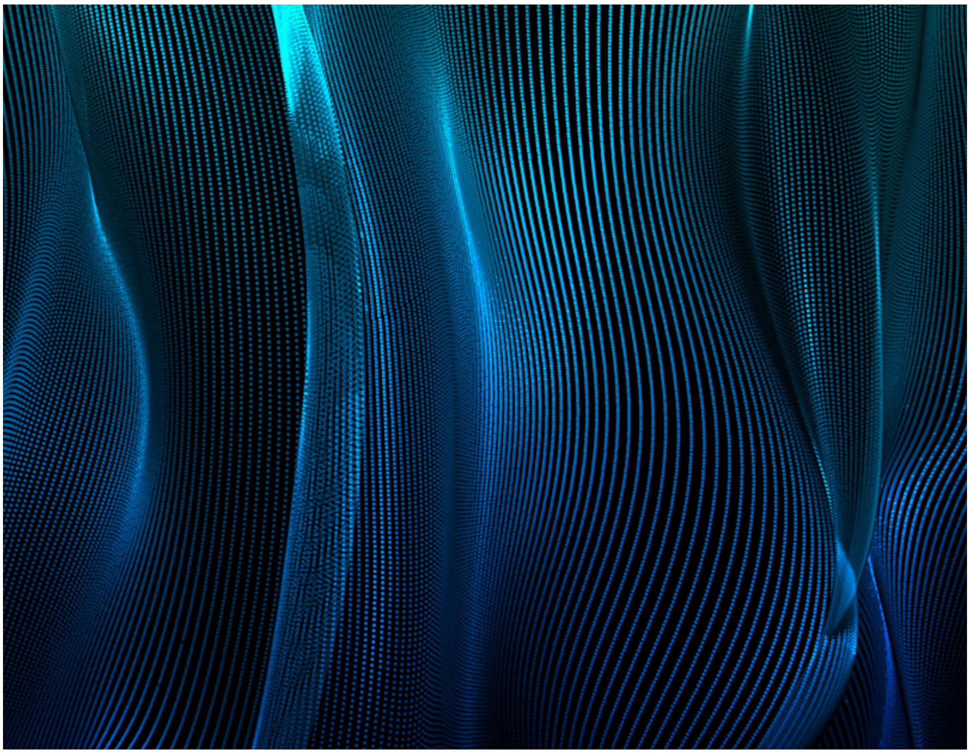
The Bank of Ghana also issued a notice to clarify the legal framework for the enforceability of netting arrangements under eligible financial contracts. Specifically, the Bank of Ghana has confirmed that the period of a temporary stay which it may impose on termination rights between a bank or specialised 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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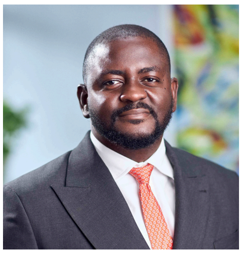

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The year 2023 saw policies, legislation and judicial decisions that affected businesses and individuals. This report provides insight into some of these developments in 2023 and the outlook for 2024 for some sectors or areas.

2023 Under Review – Policy and Legislative Developments

Manufacturing

Notable developments in 2023 include the inauguration of the Ghana Automotive Development Centre ("GADC") by the Ministry of Trade and Industry and the launch of the Ghana Automotive Code. GADC is the secretariat that provides institutional support for and has direct oversight of the automotive industry for the implementation of the Ghana Automotive Development Policy, 2019. The Ghana Automotive Code is a collection of standards compiled by the Ghana Standards Authority for the assembly of vehicles in the country and the importation of new and used vehicles.

The Ghana Standards Authority (Manufacture of Cement) Regulations, 2023 (LI 2480) ("Manufacture of Cement Regulations") became law in December 2023 to regulate the cement industry. The law applies to manufacture, production of raw materials for cement as well as the distribution and sale of cement in Ghana. The Manufacture of Cement Regulations has established the Cement Manufacturing Development Committee ("CMDC") as the committee responsible for overseeing the development and growth of local manufacture of cement as well as coordinating and monitoring activities in the manufacture of cement in Ghana. The CMDC must ensure that cement manufactured in Ghana conforms to standards developed by the Ghana Standards Authority. Furthermore, the Manufacture of Cement Regulations provides the registration and licensing requirements for manufacturers of cement in Ghana.

Media

The National Media Commission ("NMC") launched the operations of a Broadcast Content Complaints Centre with a toll-free complaints hotline for the public to report instances of offensive media content. The NMC collaborated with the National Communications Authority ("NCA"), Ghana's communications services regulator for this initiative. The initiative appears to be an attempt to regulate media content by the NMC. Subsequently, the NMC's attempt to rely on the NCA's power to revoke or suspend licences and/or authorisations for broadcasting media has faced opposition, given that the NMC has limited enforcement powers.

Healthcare

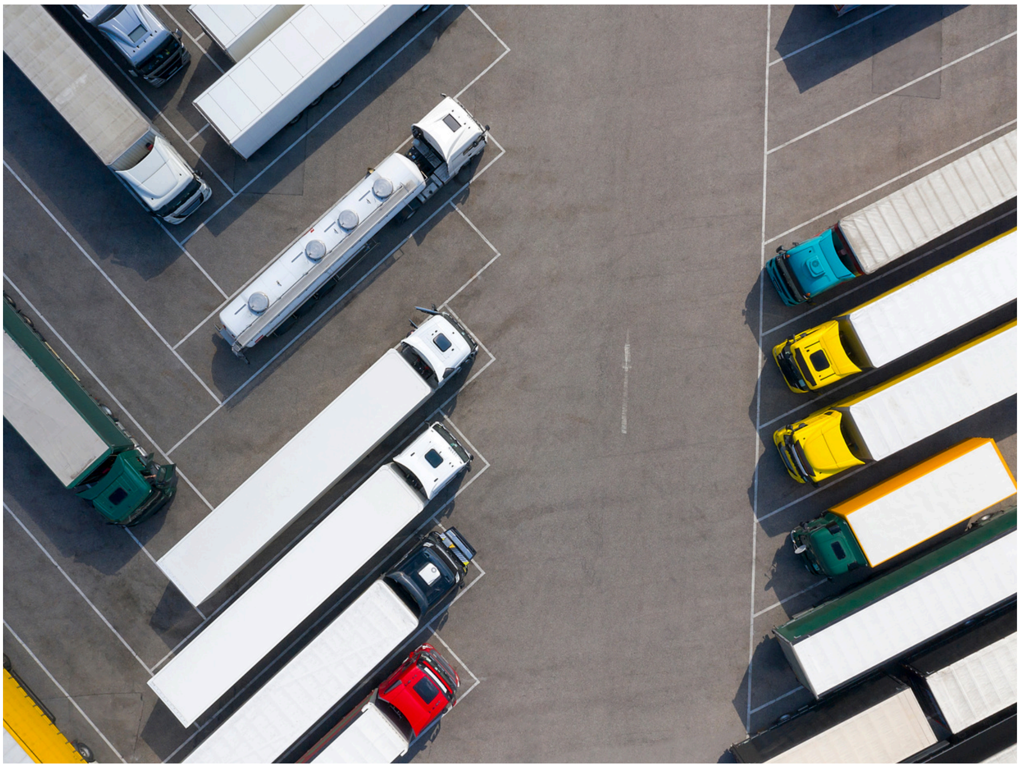
The Ministry of Health launched a National Medical Oxygen Policy to establish a framework for a national strategy to improve the production, distribution, access, storage and use of medical oxygen in the country. The COVID-19 pandemic exposed the inadequacies of the production and supply of medical oxygen across the continuum of care in the country. The policy when implemented will put in measures to meet the high demand for oxygen and reduce related morbidity and mortality.

Telecommunications

The regulator indicated in November 2023 that 5G spectrum was available and policy decisions needed to be made on its accessibility. Earlier in August 2023, the Ministry of Communications and Digitalisation announced that Ghana would not auction the 5G spectrum but would establish a neutral shared infrastructure company to deliver nationwide 4G and 5G services. The reason was to foster competition and prevent dominance by a single entity which had the capability of acquiring the spectrum.

Travel

The governments of Ghana and South Africa entered into an agreement for a visa waiver scheme for business and tourism purposes for ordinary passport holders in November 2023. Under the agreement, travellers between the two countries would be permitted to stay for a cumulative period of 90 days in a calendar year without recourse to work. In January 2024, the government of Ghana announced its commitment to implement a policy of visa-free travel to Ghana for all Africans to promote the free movement of persons.



Logistics

The Ministry of Communications and Digitalisation directed all courier and delivery service operators to register with the Postal and Courier Services Regulatory Commission ("PCSRC") by 24 January 2024. The directive also applies to e-commerce entities that provide delivery of goods. The directive is to ensure compliance with section 10 of the Postal and Courier Services Regulatory Services Commission Act, 2003 (Act 649) which requires an operator of courier services to obtain a licence from the PCSRC. With the registration, the operators will obtain a PCSRC e-certificate and AfCFTA registration. The Government has a focus on the use of digital platforms for cross-border and internal trade and the importance of having the necessary oversight of courier and delivery service operators.

Conformity Assesment

Ghana now has dedicated legislation. The Ghana Accreditation Service Act, 2023 (Act 1102) ("Accreditation Service Act") provides a regulatory framework for conformity assessment in the country. The law establishes the Ghana Accreditation Service as the institution with direct oversight of accrediting conformity assessment bodies and monitoring conformity assessment activities in Ghana.

The Accreditation Service Act applies to conformity assessment bodies established in Ghana such as calibration laboratories, testing laboratories, validation bodies, verification bodies, certification bodies, inspection bodies and rating agencies. A conformity assessment body must have accreditation and a licence from the Ghana Accreditation Service to use an accreditation symbol. Where a conformity assessment body is accredited by a foreign accreditation body, the Ghana Accreditation Service must approve the accreditation system used by the foreign accreditation body. The Accreditation Service Act has repealed the provisions of the Ghana Standards Authority Act, 2022 (Act 1078) which gave the Ghana Standards Authority the power to establish and administer the procedure and criteria for registration of conformity assessment activities and keep a register of all conformity assessment bodies operating in Ghana.

Cultivation of Narcotics

Parliament passed the Narcotics Control Commission (Amendment) Act, 2023 (Act 1100) under a certificate of urgency in July 2023. The law re-enacts section 43 of the Narcotics Control Commission Act, 2020 (Act 1019) after the Supreme Court's decision to strike it down because of the unconstitutional procedure for introducing the section in the law in the case of Ezuame Mannan v Attorney-General and Speaker of Parliament [unreported; Writ No. J1/11/2021; dated 27 July 2022]. The provision empowers the Minister of Interior, on the recommendation of the Narcotics Control Commission, to grant licences for the cultivation of cannabis which has not more than 0.3% tetrahydrocannabinol (THC) content, the primary psychoactive cannabinoid found in the cannabis plant, on a dry weight basis. This licence is limited to the cultivation of the plant for its seed or fibre for industrial or medicinal purposes. The cultivation and use of cannabis for recreational purposes remains prohibited, even for licence holders. In December 2023, the Narcotics Control Commission (Cultivation and Regulation of Cannabis) Regulations, 2023 (LI 2475) became law. It prohibits the cultivation of cannabis which has not more than 0.3% THC content on a dry weight basis without a licence. The regulations also provide the procedures and requirements for the licensing, exportation and importation of the cannabis. The law applies to a person who wishes to engage in a business related to the permitted type of cannabis.

Intellectual Property

The Copyright (Amendment) Regulations, 2023 (LI 2469) ("CopyrightRegulations") became law in July 2023 and extensively amended the Copyright Regulations, 2010 (LI 1962). The Copyright Regulations has replaced references to the defunct Internal Revenue Service and Customs Excise and Preventive Service with the Domestic Tax Revenue Division of the Ghana Revenue Authority and Ghana Revenue Authority respectively. Furthermore, the Copyright Regulations expands the information requirements for a copyright application and provides separate application forms for the different categories of protected works. The Copyright Regulations also expands on the types of devices that are subject to the special levy on devices capable of reproducing copyright works and reduces the rate of the levy. The levy expressly covers devices that help record, exhibit and/or produce audio-visual information such as external hard drives, decoders, smart televisions, digital cameras, tablets, personal computers and smartphones. However, tablets imported or assembled in Ghana for supply to educational institutions are now excluded from the levy. The Copyright Regulations has removed the fee on reprographic reproduction and introduced a fee on reproduction of literary works. The Copyright Regulations has also established the Cultural and Development Committee with functions that extend to the management of the special levy on devices capable of reproducing copyright works. Finally, the copyright monitoring team established under the Copyright Act, 2005 (Act 690) is placed under the supervision of the Copyright Office.

2024 Outlook and Projections

With many regulatory and policy reforms in the past year and the focus on digitalisation, it is expected that these developments will significantly improve the ease of doing business. The Government has acknowledged the need to strengthen its business-enabling environment to attract foreign direct investment. Since 2024 is an election year, public expenditure will likely increase due to potential Government expenditure on the election campaign and uncompleted projects.

Our sector specific outlook and projections are as follows:

Foreign Direct Investment

The Government intends to amend the Ghana Investment Promotion Centre Act, 2013 (Act 865) ("GIPC Act") to make the country more competitive and to align with international best practices. The Government intends to attract more foreign direct investments by leveraging existing relationships and building new strategic relationships. The Ghana Investment Promotion Centre ("Centre") will offer sector-specific incentives and ensure an enabling regulatory environment, particularly in agriculture, manufacturing, tourism, financial inclusion and health. When the Ghana Investment Promotion Centre (Amendment) Bill, 2023 becomes law in its current form, it will convert the Centre to the Ghana Investment Promotion Authority. It will also repeal section 27 of the GIPC Act which reserved certain activities for Ghanaians and Ghanaian enterprises. In addition, the minimum capital requirements non-citizens are currently required to meet to invest in non-trading enterprises in Ghana will be removed.

International Trade

The Government amended the Customs Act, 2015 (Act 891) to adopt and implement the 2022 Economic Community of West African States Common External Tariff popularly known as the "Harmonised Code". The amendment adds 431 tariff lines to the Custom Tariff and aligns the Value Added Tax and Excise Duty rates with the respective lines. The Customs Amendment Act, 2023 (Act 1106) also provides an import duty exemption on raw materials not available in Ghana for the manufacture of sanitary towels. The amendment became effective in December 2023.

The Government through the Ministry of Trade and Industry laid the Export and Import (Restrictions on Importation of Selected Strategic Products) Regulations, 2023 before Parliament in November 2023. The proposed regulations seek to establish a special import management regime for the commercial importation of certain goods, including rice, ceramic tiles, mineral water, motor cars and clothing. With the proposed law, the Government intends to streamline and rationalise the import bill of Ghana as well as to provide measures to conserve foreign exchange, safeguard critical imports and contribute to sustainable consumption. The proposed law would require importers of these selected strategic products to obtain an import permit from the Ministry of Trade and Industry.

There was strong opposition from various stakeholder groups and in December 2023, the Government suspended the laying of the regulations before Parliament. The Ministry of Trade and Industry has indicated that the aim of this regulation is to protect local manufacturers from competition from subsidised imported products and create a market opportunity to support their growth and sustainability. In February 2024, the Ministry of Trade and Industry announced the plan of the Government to lay the proposed regulations before Parliament in the future.

Increase in National Daily Minimum Wage

With effect from 1 January 2024, there has been an upward adjustment of the National Daily Minimum Wage from GHS 14.88 to GHS 18.15 following negotiations by the National Tripartite Committee. Additionally, after persistent demands for pay increase, the Minister of Finance in his presentation on the budget statement for 2024 announced that the minimum wage for public sector workers who earn the base pay on the Single Spine Salary Structure will have their monthly salaries increased by 23% from January to June and readjusted to 25% from July to December.

Review of Labour Act, 2003 (Act 651)

The Ministry of Employment and Labour Relations is likely to continue the consultative processes for the review of the Labour Act. It is expected that the stakeholders' meeting of industry players will be held soon. After two decades of the Labour Act being in force, stakeholders have called for its review to conform with international best practices and the new work climate especially following the COVID-19 pandemic.

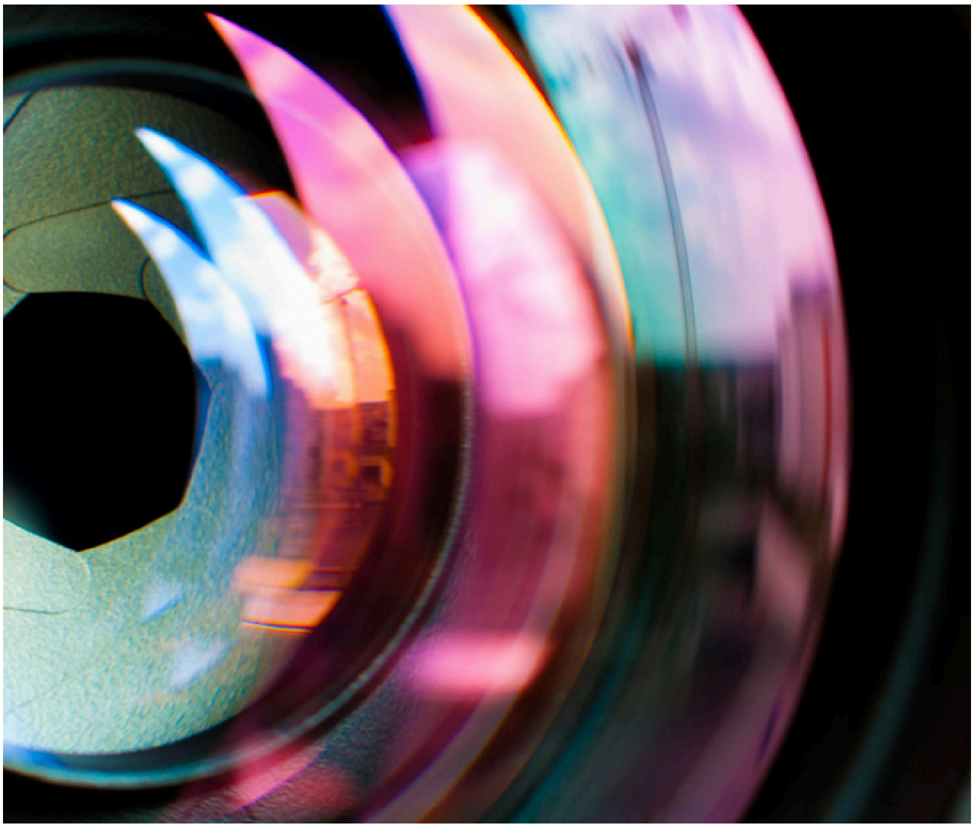
Proposed amendments to the Labour Act include the regulation of agency workers, an extension of maternity leave and an introduction of paternity leave, compassionate leave, employment of persons with disabilities and child labour practices. It is hoped that a new Labour Act would be passed before the end of the year to address its gaps and adopt new standards that fit emerging trends in the international space.

A bill to amend the Labour Act to extend maternity leave and introduce paternity leave was laid before Parliament by a private Member of Parliament in October 2023. The Labour Amendment Bill, 2023 proposes to extend the period of maternity leave from 3 months to 4 months with an additional 14 days in the case of caesarean, stillbirths or multiple deliveries.

The bill also proposes to introduce paid paternity leave for a minimum of 7 days and a maximum of 4 weeks with the option of 2 additional weeks for caesarean, stillbirths or multiple deliveries. We will be monitoring developments to see if this bill will be passed in 2024 or if the recommendations in the bill will be adopted in the review of the Labour Act that is ongoing currently.

Intellectual Property

The Government recognises that innovation is important in a knowledge-based economy. Consequently, the country needs to modernise and strengthen its intellectual property system for industry and businesses as well as have a modern intellectual property office to meet the evolving needs of clients in that space. The Government has developed and sent the Ghana Industrial Property Office Bill, 2023 to Parliament. The bill when it becomes law will establish the Ghana Industrial Property Office to protect and promote intellectual property rights in the country and have oversight of industrial property rights such as patents, trademarks, industrial designs, geographical indications and plant varieties in Ghana.



Enforcement of Licensing of Private Schools

The National Schools Inspectorate Authority ("NaSIA") announced in October 2023 that it would begin to enforce penalties for non-compliance with licensing requirements of pre-tertiary private schools under the Education Regulatory Bodies Act, 2020 (Act 1023) ("ERB Act") from January 2024. NaSIA explained that the grace period for operators of these schools to be licensed was over. The operators who have not acquired a licence to operate legally would face measures including legal action or closure of the school. Under the ERB Act, a pre-tertiary school must register with NaSIA within 6 months after the coming into force of the ERB Act. Schools established after the ERB Act must register with NaSIA within 6 months after the establishment of the school. NaSIA is mandated to inspect schools and enforce the highest quality standards and guidelines for quality education in private pre-tertiary education institutions.

Non-Profit Organisations Bill

A bill to regulate the licensing regime and operation of non-profit organisations ("NPOs") is currently being drafted. This bill will consolidate legislation related to the non-profit sector. Previously, these rules were contained in the National Non-Profit Organisation Policy and the Directives for the Management of Non-Profit Organisations Operations in Ghana launched in 2020 by the Ministry of Gender, Children and Social Protection. The bill proposes to set up a Non-Profit Organisation Secretariat ("NPO Secretariat") as the central authority responsible for the sector. The NPO Secretariat will be responsible for the registration, monitoring, evaluation and administration of non-profit organisations. The bill will also provide the nature and privileges of NPOs, conditions for the grant of benefits and tax waivers. We expect the bill to be laid before Parliament and passed into law in 2024.

Anti-LGBTQ+ Bill

The Human Sexual Rights and Family Values Act, 2024 (Anti-LGBTQ Act) passed by parliament on 28 February, 2024, which is yet to receive presidential assent to enter into force, has garnered widespread public attention and debate with growing concerns that it could negatively impact the economy through loss of foreign aid, much needed for the Government's economic recovery programme. It is not clear whether the President will assent to it before the elections in December this year.

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