

**GHANA INVESTMENT PROMOTION CENTRE
(AMENDMENT) BILL, 2023**

MEMORANDUM

The object of the Bill is to amend the Ghana Investment Promotion Centre Act, 2013 (Act 865) to provide for the conversion of the Ghana Investment Promotion Centre to the Ghana Investment Promotion Authority, for the establishment of an investment grievance resolution mechanism, for the appointment of a Deputy Chief Executive for the Ghana Investment Promotion Authority and for related matters.

The current Ghana Investment Promotion Act, 2013 (Act 865) was enacted in 2013 to amend the Ghana Investment Promotion Centre Act, 1994 (Act 478) which was passed in 1994. After ten years of operating Act 865, it is clear to the Centre and its diverse stakeholders that Act 865 requires certain amendments to enable the Centre fulfil its mandate efficiently and most importantly enable Ghana remain competitive regionally.

Furthermore, the role of the Ghana Investment Promotion Centre as an investment promotion agency tasked with the responsibility of creating a transparent, predictable and facilitating environment for investments in Ghana requires a legal structure for effectiveness and efficiency. However, a number of the provisions of Act 865 are currently a hindrance to fulfilling the responsibilities and mandate of the Ghana Investment Promotion Centre and ought to be revised or excluded from the Act. The nomenclature of the Centre does not reflect the mandate of the Centre which is both promotional and regulatory in nature. Provisions which impose blanket minimum foreign capital requirements on companies with foreign participation are an undue and unwarranted restriction on foreign direct investment.

Additionally, several provisions in Act 865 related to the Ghana Investment Promotion Centre's governance structure, registrations, reporting, technology transfer agreements, investment guarantees, offences and penalties are largely outdated and present challenges in the fulfillment of the mandate of the Centre.

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The functions of the Technical Committee generally overlaps with that of the governing body of the Ghana Investment Promotion Centre and this creates issues with the implementation of directives.

Activities reserved for Ghanaian and Ghanaian-owned enterprises found under Act 865 are inconsistent with the legislation and mandate of other government institutions that regulate these activities.

There are, as well, certain important provisions missing from the current Act. These include administrative penalties which would increase compliance with the Act towards improving the investment environment.

The passage of legislation subsequent to Act 865, such as the Companies Act, 2019 (Act 992), the Exemptions Act, 2022 (Act 1083) and the Public Financial Management Act, 2016 (Act 921) has, per their respective provisions, directly and indirectly impacted the validity of some provisions in Act 865. These provisions require an amendment to be in line with relevant legislation.

The Bill therefore seeks to revise the relevant text of provisions in Act 865 on matters such as the name of the institution, governance structure, registrations, minimum foreign capital amendments, technology transfer agreements, investment guarantees, offences, penalties and definitions. Also proposed to remedy the defects of Act 865 are the introduction of additional provisions on matters such as administrative penalties.

The proposed amendments are critical for Ghana to remain competitive in the growing competition for foreign direct investment and to bolster the position of Ghana as a preferred destination for capital inflows. The amendments, when implemented, will raise investor confidence, create legal certainty and predictability and minimize restriction on the entry of foreign direct investment. The amendments will also provide a robust regulatory framework through which investment is effectively promoted and facilitated in Ghana. This will boost Ghana's prospects as a regional hub for several economic sectors including tourism and hospitality, manufacturing, petroleum, extractives

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and agriculture. The amendments will also align the regulatory and legal framework with global best practices and maintain a competitive investment environment.

Cluses 1 and 2 of the Bill amend the Short Title and the Long Title, respectively, to Act 865.

Clause 3 of the Bill amends section 2 of Act 865 to convert the Ghana Investment Promotion Centre to the Ghana Investment Promotion Authority. The change in nomenclature reflects the mandate of the Centre which is both promotional and regulatory in nature.

Clause 4 of the Bill revises the headnote and the opening paragraph of Act 865 to reflect the change of the Ghana Investment Promotion Centre to an Authority.

The Bill, in *clause 5*, introduces new functions for the Authority including the registration, monitoring and keeping records of enterprises in Ghana to which Act 865 applies, the facilitation of an amicable settlement of grievances that may arise between an enterprise to which this Act applies and an institution of Government and the collection of the prescribed fees and charges in the performance of the functions of the Authority.

Clause 6 amends section 5 of Act 865 to reflect the change of the Ghana Investment Promotion Centre to an Authority and amends the membership of the governing body to include a representative of the Ministry responsible for Foreign Affairs not below the rank of a Deputy Minister. This is to facilitate Ghana's position on economic diplomacy and bridge the knowledge gap between the foreign missions and the Authority.

Cluses 7 and 8 of the Bill amend sections 6 and subsection (2) of section 7 respectively, of Act 865 to reflect the change in the nomenclature of the Ghana Investment Promotion Centre to an Authority.

Clause 9 of the Bill amends subsection (3) of section 8 of Act 865 to correct a clerical error as to cross-referencing.

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Clauses 10 and 11 of the Bill repeal subsection (3) of section 10 and section 11 of Act 865 to effectively abolish the Technical Committee established under section 11. These amendments address the overlaps in the functions of the Board of the Ghana Investment Promotion Centre and that of the Technical Committee.

Clause 12 of the Bill amends section 12 of Act 865 to empower the Minister responsible for Finance to approve allowances that are to be paid to the Board and members of a committee of the Board.

*Clauses 13, 14, 15 and 16 of the Bill amend sections 13, 14, 15 and 16 respectively, of Act 865 to reflect the change in the nomenclature of the Ghana Investment Promotion Centre to an Authority. *Clause 14* also amends section 14 of Act 865 to make it mandatory for the President to, in writing, designate a Minister to have oversight responsibility of the Authority.*

Section 16A of Act 865 is introduced under *clause 17*, to provide for the appointment of a Deputy Chief Executive Officer. The Deputy Chief Executive Officer is responsible to the Chief Executive Officer in the performance of functions of the Deputy Chief Executive Officer.

Clauses 18, 19 and 20 of the Bill amend sections 17, 18 and 19 respectively of Act 865 to reflect the change in the nomenclature of the Ghana Investment Promotion Centre to an Authority.

*Clause 21 of the Bill repeals paragraph (d) of subsection (1) of section 20 of Act 865 which provides for “any other moneys approved by the Minister responsible for Finance” to be captured as a source of funding for the Ghana Investment Promotion Authority. The *clause* also amends subsection (1) of section 20 of Act 865 to provide for the funds of the Authority to include administrative penalties. The *clause* further amends subsection (2) of section 20 of Act 865 to enable the moneys of the Ghana Investment Promotion Authority to be paid into a bank account opened for the purpose by the Board with the approval of the Controller and Accountant-General.*

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Clause 22 amends section 21 of Act 865 by placing the responsibility for the keeping of books, records, returns and other documents relevant to the accounts of the Ghana Investment Promotion Authority on the Board. Additionally, the Auditor-General is to audit the accounts of the Ghana Investment Promotion Authority and forward a copy each of the audit report to the Minister and the Board within six months after the end of the immediately preceding financial year. This amendment is in line with the Public Financial Management Act, 2016 (Act 921).

Clause 23 amends section 22 of Act 865 by reducing the timeline for the submission of the audit report, annual report and other reports of the Ghana Investment Promotion Authority to the President through the Minister, to thirty days. Also, the President is to, within thirty days after the receipt of the annual report, submit through the Minister, the report to Parliament with a statement that the President considers necessary.

Clause 24 of the Bill amends section 23 of Act 865 by revising the cross-referencing of the Companies Act, 2019 (Act 992).

Clause 25 amends section 24 of Act 865 to reflect the change of the Ghana Investment Promotion Centre to an Authority and also amends subsection (1) of section 24 of Act 865 to replace foreign participation with foreign ownership. The *clause* further amends subsection (3) of section 24 of Act 865 to increase the requirement for registration under the Act, of an enterprise with foreign participation, from every two years to every year. The amendments make it mandatory for external companies with an established place of business in the country to register with the Ghana Investment Promotion Centre.

Similarly, an enterprise which is wholly owned by a Ghanaian may register with the Authority and is required to renew the registration of the enterprise with the Ghana Investment Promotion Authority every year, *clause 26*. This *clause* amends section 25 of Act 865 and further provides that an enterprise which is wholly owned by a Ghanaian is entitled to the benefits and incentives set out in Act 865 after registration with the Authority.

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Clause 27 repeals section 26 of Act 865 and inserts a new section 26 which provides for an enterprise that is registered under Act 865 that seeks to invest in a priority area to apply to the Authority stating clearly the cost details of the investment and the exemptions required under the Exemptions Act, 2022 (Act 1083). The Authority is required to process the application in accordance with the Exemptions Act, 2022 (Act 1083). The *clause* also empowers the Minister to, by legislative instrument, make Regulations to specify the categories of the priority areas referred to under subsection (1), the category of investor to be classified as a Recognised Sustainable Investor and the benefits and incentives applicable to a Recognised Sustainable Investor.

Clause 28 repeals section 27 of Act 865. Section 27 of Act 865 enables a non-citizen or an enterprise not wholly owned by a citizen to invest or participate in activities previously reserved for Ghanaian and Ghanaian-owned enterprises. This amendment is necessitated by the fact that the provision conflicts with the legislation and mandate of several sector-specific institutions that regulate the activities listed under the provision. Therefore, a repeal of the provision would enable the Ghana Investment Promotion Centre to focus on the mandate to promote and facilitate investment into and within the country.

Consequential to the repeal of section 27, *clause 29* of the Bill repeals subsection (1) of section 28 of Act 865 which prevents a non-citizen from participating in an enterprise reserved for citizens. In addition, the *clause* amends subsection (2) of section 28 by permitting a non-citizen to engage in a trading enterprise upon the investment of a minimum of one million United States Dollars in cash or goods relevant to the investment or a combination of both by way of equity capital in the enterprise. The *clause* also repeals the definition of trading under subsection (3) of section 28 of Act 865. This amendment is based on the realisation that the minimum foreign capital is a significant disincentive to investment in the country as Ghana is the only country with blanket foreign capital requirements in the sub-region. The amendment therefore eliminates the minimum capital requirements for wholly-owned foreign enterprises and joint ventures.

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The capital requirement of one million United States Dollars for trading is maintained to protect the local economy.

Clause 30 amends paragraph (b) of subsection (1) of section 29 of Act 865 by removing the requirement of an enterprise to be set up for both export trading and manufacturing before qualifying to be exempt from the minimal capital requirement under subsection (1) of section 29 of Act 865.

Clause 31 amends section 30 of Act 865 to reflect the change in the nomenclature of the Ghana Investment Promotion Centre to an Authority.

Clause 32 amends section 31 of Act 865 to prevent a property, interest in a property or right over a property of an enterprise to which the Act applies from being nationalised or expropriated by the Government, except under stated conditions. The *clause* also amends section 31 of Act 865 to provide that a claim made by an enterprise under the Act is to be made against the Attorney-General and not the Authority.

Clause 33 amends section 32 of Act 365 by making the unconditional transferability in convertible currency of an enterprise subject to the Foreign Exchange Act, 2006 (Act 723) and any other relevant law. The amendment is to reflect the fact that guarantee to transfers is subject to other laws such as laws on financial reporting, criminal offences, civil penalties, judicial decisions, taxes, liquidation and bankruptcy.

Clause 34 of the Bill amends paragraph (a) of subsection (2) of section 33 of Act 865 to make the written consent of the Government a requirement for the submission of a dispute, between a foreign investor and the Government in respect of an enterprise to which Act 865 applies, to arbitration in accordance with the rules of procedure for arbitration of the United Nations Commission of International Trade Law. The purpose of the amendment is to ensure that the option of seeking redress under rules governing the United Nations Commission of International Trade Law or any other forum would be exercised with the consent of the Government.

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Clauses 35 and 36 amend sections 35 and 36 of Act 865 to reflect the change in the nomenclature of the Ghana Investment Promotion Centre to an Authority.

Clause 37 amends subsections (2), (3), (4) and (6) of section 37 to substitute “Centre” for “Authority”. The *clause* inserts a new subsection (5A) to provide a limit to the initial duration of a technology transfer agreement to five years and provide for the renewal of the agreement. Subsection (6A) is also introduced to limit the duration of the renewal of a technology transfer agreement to five years. A new subsection (8) is introduced and provides that the fees and charges in relation to technology transfer agreements that are not registered under the Act are not to be treated as a deductible tax expense of an enterprise under the Income Tax Act, 2015 (Act 791). These changes would strengthen and clarify provisions on technology transfer under Act 865 to enhance the ability of the Authority to register, keep records of and monitor technology transfer agreements efficiently.

Clauses 38 and 39 amend sections 38 and 39 of Act 865 to reflect the change in the nomenclature of the Ghana Investment Promotion Centre to an Authority.

Clause 40 amends section 40 of Act 865 by introducing a new offence of fronting. The new provision prohibits a person from fronting for a non-Ghanaian citizen or an enterprise with foreign ownership.

Clause 41 amends section 41 of Act 865 by increasing the penalty thresholds for an offence created under section 40. The amendment seeks to increase the penalty units to serve as a deterrent.

Clause 42 of the Bill inserts section 41A of Act 865 to provide for administrative penalties.

Clause 43 amends section 42 of Act 865 in respect of matters for which the Minister in consultation with the Board may, by legislative instrument, make Regulations.

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Clause 44 amends section 43 of Act 865 to revise the definition for “enterprise”, incorporate definitions of words and phrases used under the Bill and repeal the definitions of words and phrases that are not used in the Bill.

Finally, *clause 45* amends section 44 of Act 865 by inserting a new subsection (8) after subsection (7) to save the Technology Transfer Regulations, 1992 (L.I. 1547).

KEN OFORI-ATTA

Minister responsible for Finance

Date: 25th October, 2023.

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ARRANGEMENT OF SECTION

Section

1. Short title to Act 865 amended
2. Long title to Act 865 amended
3. Section 2 of Act 865 amended
4. Section 3 of Act 865 amended
5. Section 4 of Act 865 amended
6. Section 5 of Act 865 amended
7. Section 6 of Act 865 amended
8. Section 7 of Act 865 amended
9. Section 8 of Act 865 amended
10. Section 10 of Act 865 amended
11. Section 11 of Act 865 amended
12. Section 12 of Act 865 amended
13. Section 13 of Act 865 amended
14. Section 14 of Act 865 amended
15. Section 15 of Act 865 amended
16. Section 16 of Act 865 amended
17. Section 16A inserted
18. Section 17 of Act 865 amended
19. Section 18 of Act 865 amended
20. Section 19 of Act 865 amended
21. Section 20 of Act 865 amended
22. Section 21 of Act 865 amended
23. Section 22 of Act 865 amended
24. Section 23 of Act 865 amended
25. Section 24 of Act 865 amended
26. Section 25 of Act 865 amended
27. Section 26 of Act 865 amended
28. Section 27 of Act 865 amended
29. Section 28 of Act 865 amended
30. Section 29 of Act 865 amended
31. Section 30 of Act 865 amended
32. Section 31 of Act 865 amended

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33. Section 32 of Act 865 amended
34. Section 33 of Act 865 amended
35. Section 35 of Act 865 amended
36. Section 36 of Act 865 amended
37. Section 37 of Act 865 amended
38. Section 38 of Act 865 amended
39. Section 39 of Act 865 amended
40. Section 40 of Act 865 amended
41. Section 41 of Act 865 amended
42. Section 41A inserted
43. Section 42 of Act 865 amended
44. Section 43 of Act 865 amended
45. Section 44 of Act 865 amended

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**GHANA INVESTMENT PROMOTION CENTRE
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AN ACT to amend the Ghana Investment Promotion Centre Act, 2013 (Act 865) to provide for the conversion of the Ghana Investment Promotion Centre to the Ghana Investment Promotion Authority, for the establishment of an investment grievance resolution mechanism, for the appointment of a Deputy Chief Executive Officer and for related matters.

PASSED by Parliament and assented to by the President:

Short title to Act 865 amended

1. The Ghana Investment Promotion Centre Act, 2013 (Act 865), referred to in this enactment as the “principal enactment”, is amended by the substitution for the short title, of

“Ghana Investment Promotion Authority Act, 2013 (Act 865)”.

Long title to Act 865 amended

2. The principal enactment is amended by the substitution for the long title, of

“AN ACT to provide for the Ghana Investment Promotion Authority as the agency of Government responsible for the encouragement and promotion of investments in Ghana, to provide for the creation of an attractive incentive framework and a transparent, predictable and facilitating environment for investments in Ghana and for related matters.”.

Section 2 of Act 865 amended

3. The principal enactment is amended by the substitution for section 2, of

“2. Establishment of the Ghana Investment Promotion Authority

(1) There is established by this Act, the Ghana Investment Promotion Authority as a body corporate.

(2) For the performance of the functions of the Authority, the Authority may acquire and hold property, dispose of property and enter into a contract or any other related transaction.

(3) Where there is a hindrance to the acquisition of land, the land may be acquired for the Authority under the Land Act, 2020 (Act 1036) and the cost shall be borne by the Authority.”.

Section 3 of Act 865 amended

4. The principal enactment is amended in section 3 by
- (a) the substitution for the headnote, of **“Object of the Authority”**; and
 - (b) the substitution for “Centre” in the opening paragraph, of “Authority”.

Section 4 of Act 865 amended

5. The principal enactment is amended in section 4 by
- (a) the substitution for the headnote, of **“Functions of the Authority”**;
 - (b) the substitution for “Centre” in the opening paragraph, of “Authority”;
 - (c) the substitution for paragraph (e), of
 - “(e) register, monitor and keep records of enterprises in Ghana to which this Act applies,”; and
 - (d) the substitution for paragraphs (h) and (i), of
 - “(h) bring about harmonisation in investment policy formulation through coordination of the activities of Ministries, Departments and Agencies and other public institutions;
 - (i) facilitate an amicable settlement of grievances that may arise between an enterprise to which this Act applies and an institution of Government;

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- (j) collect the prescribed fees and charges in the performance of the functions of the Authority; and
- (k) perform any other functions that are necessary for the attainment of the objects of this Act.”.

Section 5 of Act 865 amended

6. The principal enactment is amended in section 5 by

- (a) the substitution for the headnote, of **“Governing body of the Authority”**
- (b) the substitution for “Centre” in subsection (1), of “Authority”;
- (c) the insertion after paragraph (e) of subsection (1), of
“(eA) a representative of the Ministry of Foreign Affairs not below the rank of a Deputy Minister,”; and
- (d) the substitution for paragraph (f) of subsection (1), of “Chief Executive Officer of the Authority,”.

Section 6 of Act 865 amended

7. The principal enactment is amended in section 6 by the substitution for “Centre”, of “Authority”.

Section 7 of Act 865 amended

8. The principal enactment is amended in section 7 by the substitution for “Centre” in subsection (2), of “Authority”.

Section 8 of Act 865 amended

9. The principal enactment is amended in section 8 by the substitution for subsection (3), of

“(3) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, a member of the Board appointed by the President under paragraph (g) of subsection (1) of section 5 shall be elected by the members present from among their number to preside.”.

Section 10 of Act 865 amended

10. The principal enactment is amended in section 10 by the repeal of subsection (3).

Section 11 of Act 865 amended

11. The principal enactment is amended by the repeal of section 11.

Section 12 of Act 865 amended

12. The principal enactment is amended by the substitution for section 12, of

“12. Allowances

Members of the Board and members of a committee of the Board shall be paid the allowances approved by the Minister responsible for Finance.”.

Section 13 of Act 865 amended

13. The principal enactment is amended in section 13 by

- (a) the substitution for the headnote, of **“Branch offices of the Authority”**; and
- (b) the substitution for “Centre” in subsections (1) and (2), of “Authority”.

Section 14 of Act 865 amended

14. The principal enactment is amended by the substitution for section 14, of

“14. Executive oversight

(1) The Authority is responsible to the President.

(2) The President shall, in writing, designate a Minister to have oversight responsibility of the Authority.

(3) The Minister designated under subsection (2) may give directives to the Board on matters of policy and the Board shall comply.”.

Section 15 of Act 865 amended

15. The principal enactment is amended in section 15 by

(a) the substitution for the headnote, of **“Chief Executive Officer of the Authority”**; and

(b) the substitution for “Centre” in subsection (1), of “Authority”.

Section 16 of Act 865 amended

16. The principal enactment is amended in section 16 by the substitution for “Centre” in paragraph (a), of “Authority”.

Section 16A inserted

17. The principal enactment is amended by the insertion after section 16, of

“16A. Appointment of Deputy Chief Executive Officer

(1) The President shall, in accordance with article 195 of the Constitution, appoint a Deputy Chief Executive Officer for the Authority.

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(2) The Deputy Chief Executive Officer shall hold office on the terms and conditions specified in the letter of appointment.

(3) The Deputy Chief Executive Officer is responsible to the Chief Executive Officer in the performance of functions of the Deputy Chief Executive Officer.”.

Section 17 of Act 865 amended

18. The principal enactment is amended in section 17 by

- (a) the substitution for the headnote, of **“The Secretary and other staff of the Authority”**; and
- (b) the substitution for “Centre” in subsections (1), (2), (3), (4) and (5), of “Authority”.

Section 18 of Act 865 amended

19. The principal enactment is amended in section 18 by

- (a) the substitution for the headnote, of **“Divisions of the Authority”**; and
- (b) the substitution for “Centre” in section 18, of “Authority”.

Section 19 of Act 865 amended

20. The principal enactment is amended in section 19 by the substitution for “Centre”, of “Authority”.

Section 20 of Act 865 amended

21. The principal enactment is amended in section 20 by

- (a) the substitution for the headnote, of **“Expenses and funds of the Authority”**;

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(b) the substitution for subsection (1), of

“(1) The funds of the Authority include

- (a) moneys approved by Parliament;
- (b) fees and charges that accrue to the Authority in the performance of the functions of the Authority;
- (c) administrative penalties; and
- (d) donations, gifts and grants.”;

(c) the substitution for subsection (2), of

“(2) The moneys of the Authority shall be paid into a bank account opened for the purpose by the Board with the approval of the Controller and Accountant-General.”; and

(d) the substitution for “Centre” in subsections (3) and (4), of “Authority”.

Section 21 of Act 865 amended

22. The principal enactment is amended by the substitution for section 21, of

“21. Accounts and audit of the Authority

(1) The Board shall keep books, records, returns and other documents relevant to the accounts of the Authority in the form approved by the Auditor-General.

(2) The Board shall, at the end of each financial year, submit the accounts of the Authority to the Auditor-General for audit.

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(3) The Auditor-General shall, within six months after the end of the immediately preceding financial year, audit the accounts and forward a copy each of the audit report to the Minister and the Board.

(4) The financial year of the Authority is the same as the financial year of the Government.”.

Section 22 of Act 865 amended

23. The principal enactment is amended by the substitution for section 22, of

“22. Annual report and other reports of the Authority

(1) The Board shall, within thirty days after the receipt of the audit report, submit an annual report to the President through the Minister covering the activities and operations of the Authority for the year to which the annual report relates.

(2) The annual report shall include the report of the Auditor-General.

(3) The President shall, within thirty days after the receipt of the annual report, submit through the Minister the report to Parliament with a statement that the President considers necessary.

(4) The Board shall submit to the President any other report which the President may require in writing.”.

Section 23 of Act 865 amended

24. The principal enactment is amended by the substitution for section 23, of

“23. Establishment of enterprises

A person who intends to establish an enterprise for the purpose of this Act shall incorporate or register the enterprise in accordance with the Companies Act, 2019 (Act 992).”.

Section 24 of Act 865 amended

25. The principal enactment is amended in section 24 by

(a) the substitution for the headnote, of **“Registration of enterprises with the Authority”**;

(b) the substitution for subsection (1), of
“(1) An enterprise in which foreign ownership is permitted under this Act shall, after the incorporation or registration of the enterprise and before commencement of operations, be registered with the Authority.”;

(c) the substitution for subsection (2), of
“(2) The Authority shall within five working days from the date of receipt of a completed registration form register the enterprise if the Authority is satisfied that

(a) all the relevant documents for registration are in order;

(b) the minimum foreign equity capital requirement has been complied with; and

(c) the prescribed fees required for registration have been paid.”; and

(d) the substitution for subsection (3), of

“(3) An enterprise in which foreign ownership is permitted under this Act shall renew the registration of the enterprise with the Authority every year.”.

Section 25 of Act 865 amended

26. The principal enactment is amended by the substitution for section 25, of

“25. Registration of wholly-owned Ghanaian enterprises with the Authority

An enterprise which is wholly owned by a Ghanaian

- (a) may after being incorporated or registered be registered with the Authority;
- (b) shall renew the registration of the enterprise with the Authority every year;” and
- (c) is entitled to the benefits and incentives set out in this Act after registration with the Authority.”.

Section 26 of Act 865 amended

27. The principal enactment is amended by the substitution for section 26, of

“26. Benefits and incentives

(1) An enterprise that is registered under this Act that seeks to invest in a priority area may apply to the

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Authority stating clearly the cost details of the investment and the exemptions required under the Exemptions Act, 2022 (Act 1083).

(2) The Authority shall process the application in accordance with the Exemptions Act, 2022 (Act 1083).

(3) The Minister may, by legislative instrument, make Regulations to specify

- (a) the categories of the priority areas referred to under subsection (1);
- (b) the category of investor to be classified as a Recognised Sustainable Investor; and
- (c) the benefits and incentives applicable to a Recognised Sustainable Investor.”.

Section 27 of Act 865 amended

28. The principal enactment is amended by the repeal of section 27.

Section 28 of Act 865 amended

29. The principal enactment is amended in section 28 by

- (a) the repeal of subsection (1);
- (b) the substitution for subsection (2), of

“(2) A person who is not a citizen may engage in a trading enterprise if that person invests in the enterprise, an amount of not less than one million United States Dollars in

- (a) cash,

- (b) goods relevant to the investment, or
- (c) a combination of both cash or goods relevant to the investment

by way of equity capital.”; and

- (c) the repeal of subsection (3).

Section 29 of Act 865 amended

30. The principal enactment is amended in section 29 by the substitution for paragraph (b) of subsection (1), of

“(b) an enterprise set up solely for export trading or manufacturing.”.

Section 30 of Act 865 amended

31. The principal enactment is amended in section 30 by the substitution for “Centre” in paragraph (b) of “Authority”.

Section 31 of Act 865 amended

32. The principal enactment is amended by the substitution for section 31, of

“31. Guarantee against expropriation

(1) Subject to the Constitution and any other relevant law, a property, interest in a property or right over a property of an enterprise to which this Act applies shall not be nationalised or expropriated by Government or subjected to a measure that has the effect of nationalisation or expropriation, except in the public interest, for a public purpose and under a law which makes provision for

- (a) prompt payment of fair and adequate compensation; and

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(b) a right of access to the High Court for the determination of

(i) the interest or right of the investor; and

(ii) the amount of compensation to which the investor is entitled.

(2) A claim made by an enterprise under this Act shall be made against the Attorney-General and not the Authority.”.

Section 32 of Act 865 amended

33. The principal enactment is amended by the substitution for section 32, of

“32. Investment guarantees, transfer of capital, profits, dividends and remittances

Subject to the Foreign Exchange Act, 2006 (Act 723) and any other relevant enactment, an enterprise shall, through an authorised dealer bank, be guaranteed unconditional transferability in freely convertible currency of

(a) dividends or net profits attributable to the investment made in the enterprise;

(b) payments in respect of loan servicing, where a foreign loan has been obtained;

(c) fees and charges in respect of a technology transfer agreement registered under this Act; and

- (d) the remittance of proceeds, net of all taxes and other obligations, in the event of sale or liquidation of the enterprise or any interest attributable to the investment in the enterprise.”.

Section 33 of Act 865 amended

34. The principal enactment is amended in section 33 by the substitution for paragraph (a) of subsection (2), of

- “(a) in accordance with the rules of procedure for arbitration of the United Nations Commission of International Trade Law, with the prior consent, in writing, of the Government;”.

Section 35 of Act 865 amended

35. The principal enactment is amended in section 35 by the substitution for “Centre” in subsections (2) and (3), of “Authority”.

Section 36 of Act 865 amended

36. The principal enactment is amended in section 36 by the substitution for “Centre”, of “Authority”.

Section 37 of Act 865 amended

37. The principal enactment is amended in section 37 by

- (a) the substitution for “Centre” in subsections (2), (3), (4) and (6), of “Authority”;
- (b) the insertion after subsection (5), of

“(5A) The initial duration for a technology transfer agreement under subsection (5)

- (a) shall not exceed five years, and

- (b) is subject to renewal.”; and
- (c) the insertion after subsection (6), of
“(6A) The duration for a renewal of a technology transfer agreement under subsection (6) shall not exceed five years.”; and
- (d) the addition after subsection (7), of
“(8) Fees and charges in relation to technology transfer agreements that are not registered under this Act shall not be treated as a deductible tax expense of an enterprise under the Income Tax Act, 2015 (Act 791).”.

Section 38 of Act 865 amended

38. The principal enactment is amended in section 38 by the substitution for “Centre” in subsections (1), (2) and (3), of “Authority”.

Section 39 of Act 865 amended

39. The principal enactment is amended in section 39 by

- (a) the substitution for the headnote, of “**Appeals against decisions of the Authority**”; and
- (b) the substitution for “Centre” in subsections (1) and (5), of “Authority”.

Section 40 of Act 865 amended

40. The principal enactment is amended in section 40 by

- (a) the substitution for “Centre” in paragraphs (a), (d), (e) and (f), of “Authority”; and
- (b) the substitution for paragraph (g), of

“(g) fronting for a non-Ghanaian citizen or an enterprise with foreign ownership, or”.

Section 41 of Act 865 amended

41. The principal enactment is amended in section 41 by

(a) the substitution for subsection (1), of

“(1) An enterprise which commits an offence under section 40 is liable on summary conviction to a fine of not less than two thousand penalty units and not more than four thousand penalty units and in the case of a continuing offence to an additional fine of not less than one hundred penalty units and not more than two hundred penalty units for each day that the offence continues.”; and

(b) the substitution for “Centre” in subsection (2), of “Authority”.

Section 41A inserted

42. The principal enactment is amended by the insertion after section 41, of

“41A. Administrative penalties

(1) An enterprise that fails to register with the Authority under section 24 is liable to pay to the Authority an administrative penalty of five hundred penalty units for every month of non-registration after the incorporation of the enterprise under the Companies Act, 2019 (Act 992).

(2) An enterprise that fails to renew the registration of the enterprise with the Authority under section 24 is liable to pay to the Authority an administrative penalty of two hundred and fifty penalty units for every month of non-renewal from the date of expiry of the last registration with the Authority.

(3) Where a person who is liable to pay to the Authority an administrative penalty imposed under this section fails to pay the administrative penalty, the Authority shall shut down the business of that person.”.

Section 42 of Act 865 amended

43. The principal enactment is amended in section 42 by

(a) the substitution for subsection (1), of

“(1) The Minister in consultation with the Board may, by legislative instrument, make Regulations to

(a) prescribe for matters relating to technology transfer;

(b) prescribe procedures for the grant of licences and privileges or exemptions; and

(c) prescribe generally for the effective implementation of this Act.”; and

(b) the substitution for “Centre” in paragraph (b) of subsection (3), of “Authority”.

Section 43 of Act 865 amended

44. The principal enactment is amended in section 43 by

(a) the repeal of the definitions for the following words and phrases:

“centre”;

“finished pharmaceutical product”;

“pharmaceutical product”; and

“strategic investment”;

(b) the substitution for the definition for “enterprise”, of

““enterprise” means a body corporate or other business registered under the Companies Act, 2019 (Act 992) that is established for the purpose of making profit and may be in the nature of an external company;”;

(c) the insertion after the definition for “expropriation”, of

““established place of business” means a branch, management, share, transfer, or registration office, factory, mine, or any other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the body corporate or maintains a stock of merchandise belonging to that body corporate from which the agent regularly fills orders on behalf of the body corporate;”

““external company” means a body corporate formed outside the Republic which has an established place of business in the country;”;

- (d) the insertion after the definition for “foreign investor”, of

““front” means to act in a particular manner to conceal the fact that an enterprise registered under this Act is wholly or partly owned or controlled by a non-Ghanaian citizen;”;

- (e) the insertion after the definition for “public service”, of

““Recognised Sustainable Investor” means an investor that is registered under the Act and provides a significant contribution to the sustainable development goals of the country as determined by the Authority;”;

- (f) the substitution for the definition for “technology transfer agreement”, of

““technology transfer agreement” means an agreement with an enterprise incorporated under the Companies Act, 2019 (Act 992) which has a duration of not less than eighteen months and involves

- (a) the assignment, sale and licensing of foreign patents, foreign trademarks and all forms of foreign industrial property rights;
- (b) the supply of foreign know-how or foreign technological knowledge;

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- (c) the supply of foreign expertise, foreign technical advisory services, foreign technical assistance and any other technical services in whatever form they may be and supplied; and
- (d) the provision of foreign managerial services and foreign managerial personnel;” and
- (g) the substitution for the definition for “trading enterprise”, of

““trading enterprise” means an enterprise which has the principal activity of the enterprise being the purchase or sale of goods, whether imported or not, carried out in Ghana; and”.

Section 44 of Act 865 amended

45. The principal enactment is amended in section 44 by the addition after subsection (7), of

“(8) The Technology Transfer Regulations, 1992 (L.I. 1547) is saved.”.



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