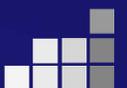


Integrated Legal Consultants

INCORPORATION AND THE REGISTRATION OF
COMPANIES IN GHANA

*By Mojinyinola Odebiyi
(Legal Consultant)*



Editor's Note

Integrated Legal Consultants (ILC) was founded in April 2007, in Accra, Ghana, to offer dedicated and innovative corporate legal services while ensuring that the Ghanaian and West African business community and our network of international clients benefit from the highest quality of corporate and commercial legal services that the Practice provides.

As part of this vision, our Practice has introduced the publication of newsletters on legal and economic issues that would be of interest to its clients and equally affect their transactions. This is our fifth edition.

Registration of business entities and companies is the first step to doing business in Ghana. Most foreign investors will be required to incorporate their company with the Registrar General's Department and obtain requisite certificates before they can operate in Ghana.

In this issue, we have highlighted the process for the incorporation of a limited liability company in Ghana.

This issue also highlights the different kinds of companies that can be registered in Ghana.

We hope you find it informative and educative. Your feedback is welcomed.

Happy Reading

Esohe Olajide

Editor

Olusola Ogundimu

Editor-In-Chief

INCORPORATION AND THE REGISTRATION OF COMPANIES IN GHANA. - Mojinyinola Odebiyi (Legal Consultant)

In Ghana the 2 (two) major legislations that provides for the general rules and steps required to establish companies are the Companies Act 1963, Act 179 and the Ghana Investment Promotion Centre Act 2013, Act 865.

The types of Companies that can be registered in Ghana include the following:

1. Limited Liability Companies (LLC) (also referred to as a Company Limited by Shares).

Under this type of company, the liabilities of the Members are limited to the amount paid or unpaid on the shares held by them in the Company. Limited Liability Companies can either be private or public.

A Private LLC restricts rights of shareholders to transfer shares, provides for a minimum of 1 and maximum of 50 shareholders, is prohibited from making an invitation to the public to acquire its shares and is prohibited from making an invitation to the public to deposit money for a fixed period.

On the other hand, any other company that does not exhibit the features as highlighted above is regarded as a Public LLC.

2. Company Limited by Guarantee (CLG).

A CLG is a Company having the liability of its Members limited to the amount that the members may respectively undertake to contribute to the assets of the Company in the event of it being wound up. Non-Governmental Organisations (NGOs), Religious groups and Associations are all registered under this type of company in Ghana.

The features of a Company Limited by Guarantee include the following:

- a. It is a non-profit organisation
- b. No creation and issuance of shares

Total contribution by members in the event of it been wound up shall not at any time be less than Seven Million Cedis.

3. Unlimited Liability Company

This is a Company where the liabilities of its members are unlimited.

4. External Company

An External Company is a body corporate formed outside Ghana, which has an established place of business in Ghana. It may also be referred to as a branch or a liaison office.

5. Sole Proprietorship/Business Name

The establishment of this type of enterprise is regulated by the provisions of the Registration of Business Names Act 1962, Act 151.

Features of a Sole Proprietorship/Business name include the following:

- a. It is an enterprise solely owned by an individual, hence the name.
- b. The option to register same is available only to persons of Ghanaian nationality

This article will now take a look at the process for the incorporation of a Limited Liability Company.

The process for the incorporation of a Limited Liability Company are as follows:

1. Conduct a name availability search at the Registrar General's Department, Accra on 2 - 3 proposed names given by the Client.

This newsletter includes general information about legal issues and developments in the law. Such materials are for informational purposes only and may not necessarily reflect the most current legal developments. These informational materials are not intended, and must not be taken, as legal advice on any particular set of facts or circumstances. You need to contact a lawyer licensed in your jurisdiction for advice on specific legal issues and problems.

2. The Client would be required to provide the following information:

- Object Clause(s) of the Company. (Must be short and precise, not more than 4 -5 paragraphs)
- Stated Capital. This is a Minimum of GHC500.00 for a wholly Ghanaian company. A minimum of US\$200,000.00 as foreign investment in respect of the percentage of shares held in the Company for a Joint Venture (Partly Ghanaian owned) and a minimum foreign investment of US\$500,000.00 for a wholly foreign owned company. A Trading company is required to have a minimum foreign investment of US\$1,000,000.00.

The shareholding threshold is provided for in Section 28 (1) of the GIPC Act 2013, Act 865.

- Directors: The law requires a minimum of 2 (two) Directors. Details such as Name, Residential Address, Nationality, Occupation, Tax Identification Number and the details of their Directorship of other Companies in Ghana would be required. 1(One) of the Directors must be resident in Ghana (nationality is not a requirement for the resident director)- Section 189 (1) of the Companies Act, 1963 (Act 179).

For Companies that seeks to operate within the Oil and Gas Sector and are therefore mandated to register with the Petroleum Commission, such companies if registering as an Indigenous Ghanaian Company are required to reflect the requirement of a 80% Ghanaian and 20% Foreign management team at the Board level, therefore a total number of 5 Directors will be required, 4 of whom must be Ghanaian and 1 a foreign national.

- Details of Shareholders such as Name, Residential and Postal Address, Nationality, Age, Tax Identification Number and Occupation, details of the representative where the shareholder is a legal entity, shall be required. The official stamp or seal of the legal entity's Shareholder must also be affixed on the forms with details of the representative.

- Minimum of 1(One) and maximum of 50 (Fifty) Shareholders.
- Shareholding Structure of the Company with respect to percentages to be held by the Shareholders.
- Company Secretary. This could either be an individual or a firm practicing in Ghana.
- Details of the Auditor.

It is a precondition to the incorporation of all Companies in Ghana (except for a CLG and an External Company) to appoint an Auditor. The appointed Auditors must be accountants qualified to practice as auditors in Ghana and must give their consent in writing to act as auditors to the company at the time of incorporation.

3. Obtain Tax Identification Numbers on behalf of all the Directors and shareholders of the Company at the Ghana Revenue Authority.
4. Complete and arrange for the execution of the incorporation forms, lodge same at the Registrar General Department (RGD) for the incorporation process to commence.
5. Once the process has been completed, the company will be issued with incorporation or registration documents by the Registrar at the Registrar General Department (RGD), Accra and same will be forwarded to the Client while originals are kept in our custody till further instructions from the Client.

Finally, please note that it is mandatory for every enterprise with foreign participation in Ghana to be registered with the Ghana Investment Promotion Center as required by the Ghana Investment Promotion Centre Act 2013 (Act 865), which is the focal point for regulation and promotion of foreign investments in Ghana.

If you require any assistance or require further information kindly send an email to

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