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Artificial Intelligence and Tax Administration

Francisca Essilfi

Introduction

Margrethe Vestager, the Executive Vice-President for *A Europe Fit for the Digital Age*, profoundly captured the transformative power of Artificial Intelligence ("AI") with her words: *"Artificial Intelligence (AI) has the potential to change the way we work and live and promises enormous benefits to the global community"*. With the European Union leading the charge, the world's first comprehensive AI regulation officially came into force on 1 August 2024, marking a historic step in shaping the future of AI governance.¹

The OECD Tax Administrations 2023 Report reveals that over 80% of tax administrations surveyed are using or are in the process of implementing leading-edge techniques to exploit data in ways that reduce the need for human intervention. Although still in the early stages, AI and machine learning are already driving efficiencies, allowing resources to be deployed in other areas.²

This article discusses the use and impact of AI in tax administration, along with Ghana's progress in implementing AI technologies.

What exactly is Artificial Intelligence?

AI is a technology that enables computers and machines to simulate human learning, comprehension, problem-solving, decision-making, creativity, and autonomy. AI-equipped applications and devices can recognize and identify objects, understand and respond to human language, and learn from new information and experience. Also, they can make detailed recommendations to users and experts as well as act independently, reducing the need for human intelligence or intervention (a classic example being a self-driving car).³

1 P. Poropat, Press Corner, European Commission – European Commission, 2024. Available at: https://ec.europa.eu/commission/presscorner/details/en/ip_24_4123 (Accessed: 13 September 2024).

2 Tax administration 2023 (2023) OECD. Available at: https://www.oecd.org/en/publications/tax-administration-2023_900b6382-en.html (Accessed: 13 September 2024).

3 C. Stryker and E. Kavlakoglu What is Artificial Intelligence (AI)? IBM (2024) available at: <https://www.ibm.com/topics/artificial-intelligence> (Accessed: 13 September 2024).

Impact of AI on Global Tax Administrations

In the era of digitalization and continuous technological advancement, tax administrations are exploring ways to enhance customer experience and simplify tax compliance for taxpayers. The OECD 2023 study on AI, reported that 65% of tax administrations around the world already use AI, 40% of countries use virtual assistants and more than half of all global tax agencies are using AI for risk assessment.

Examples of how AI is being utilized in various tax administrations are highlighted below:

Singapore

The Inland Revenue Authority of Singapore (IRAS) developed the 'One Payout Platform' in 2022 to detect misuse of its payout system and identify risky payouts. The platform incorporates data analytics and machine learning capabilities, including components such as data and anti-gaming models, risk-scoring engines, and a user-friendly interface. This integration has allowed IRAS to improve productivity, significantly reduce the time required to onboard new schemes, and enhance fraud detection in these new payout schemes.

Israel

In Israel, the tax administration has implemented an AI-driven system to automate real estate tax assessments, reducing the workload of tax inspectors by leveraging the computing capabilities of online platforms. The project was initiated in 2022 and has significantly reduced the duration of tax assessment, allowing tax officials to focus on more complex tax issues with higher tax returns. By moving real estate transaction filings online, the system handled 30,500 real estate transactions in 2022 (approximately 34% of all similar transactions), saving the administration 30,500 working hours.

Ireland

To offer taxpayers the best customer experience and to eliminate taxpayers' responsibility to self-categorize their inquiries, the Office of the Revenue Commissioners utilized AI to automate the process of classifying and routing taxpayers' inquiries to the appropriate tax experts by developing and utilizing proof of concept pilots to determine the best fit for various situations. By using the best-fit technology, a model was developed resulting in the implementation of a simple online user interface to remove complicated drop-down menus. This model led to an increase in accuracy from 70% to 97% levels of self-classification by taxpayers, reducing the time to route inquiries to experts by over twenty-four hours.

United States

Chatbots have helped the Internal Revenue Service (IRS) handle 2 million chats over the past six years. These chatbots are available in both English and Spanish on the IRS website to help taxpayers sort out their collection notice without the intervention of the IRS including the provision of information about making a payment, notice clarification, and response to frequently asked questions with an option to get help from a live assistant. Additionally, the IRS offers collection voice bots, which have managed 8.2 million calls in English and Spanish for customers using the Automated Collection System (ACS). This enabled the IRS to answer 30% more ACS calls in 2012.⁴

⁴ Tax administration 2023 (2023) OECD. Available at: https://www.oecd.org/en/publications/tax-administration-2023_900b6382-en.html (Accessed: 13 September 2024).

Ethical Implications and Challenges of using AI in Tax Administration

The increasing demand for AI in enhancing business operations and customer service poses new challenges and threats. This prompts important questions: Can AI systems consistently provide accurate answers? Are taxpayers' personal information protected? We have highlighted some of the challenges tax administrations may be facing in this AI boom.

1. False Information (AI Hallucination)

One of the challenges of using AI is the quality and accuracy of its output. In *Harber v Commissioners for His Majesty's Revenue and Customs*, cases presented by the Appellant were not backed by real world evidence, they did not exist. Mrs Harber, the Appellant later accepted that it was "possible" that the cases had been generated by an AI system, and she had no alternative explanation for the fact that no copy of any of those cases could be located on any publicly available database of first-tier tribunal judgment.⁵

2. Privacy Risk

AI systems are untransparent as to how data collected from taxpayers are used and removed or corrected. Further, the risk of others using the personal data of taxpayers poses a threat to privacy. Here are some keyways AI can pose data privacy risks:

- **Data Breaches:** Without robust security measures, AI tools may be susceptible to data breaches, leading to unauthorized access or disclosure of sensitive user information.
- **Re-identification Risks:** If AI tools handle personal data and their anonymization techniques are insufficient, there is a risk of re-identification, which can compromise individual privacy.
- **Data Retention Issues:** When AI tools retain user data longer than necessary or fail to delete it properly, the risk of unauthorized access or unintended use of personal information increases.⁶

3. Impact on Technical Skill

Professor Elaine Doyle, a Professor of Taxation in the Kemmy Business School explained that she gained a thorough understanding of tax computations by doing them manually. Without this detailed technical knowledge, tax practitioners might struggle to provide strong professional advice. For instance, if a tax official does not know how to calculate the tax-free portion of a termination payment due to automation, he might not be able to advise a client effectively on maximizing it. She added that AI will cut down the time spent on routine tax compliance tasks, leading to a reduced need for tax trainees.⁷

In the following section, we explore potential solutions to help tax administrations address these challenges in the era of AI:

1. Although this is not a permanent solution, one approach to reduce errors generated by AI is the use of a more advanced language model. For instance, ChatGPT3.5 is currently the free model from Open AI, but the paid version ChatGPT-4 generates better results when you use it for tasks that require complex language.⁸

5 First-tier Tribunal (tax) (2023) *Harber v Commissioners for His Majesty's Revenue and Customs* [2023] UKFTT 1007 (TC) (04 December 2023) <<https://www.bailii.org/uk/cases/UKFTT/TC/2023/TC09010.html>> accessed 13 September 2024.

6 B. Alarie and R. McCreight (2023) *The ethics of Generative AI in tax practice*, SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4541369> accessed 23 December 2024.

7 Yerun, 'Evolution or obsolescence: Artificial Intelligence and the tax practitioner' (Young European Research Universities Network, 26 April 2024) <<https://yerun.eu/2024/04/evolution-or-obsolescence-artificial-intelligence-and-the-tax-practitioner/>> accessed 23 December 2024

8 L. Tancredi, "AI Strategies Series: 7 ways to overcome hallucinations, FactSet Insight (17 June 2024)" <<https://insight.factset.com/ai-strategies-series-7-ways-to-overcome-hallucinations>> accessed 28 December 2024.

2. There is the need for a much stronger regulatory system that empowers users to switch from opt-out to opt-in data collection and ensures that untapped aspects of data privacy are covered. Regulators should implement strategies to ensure adherence to regulations by both tax administrations and taxpayers. Also, tax administrations employing AI in their tax systems should stay abreast with data protection laws and ensure that AI systems comply with these laws and ethical standards.⁹
3. To be relevant in the tax industry, students considering a career in tax should possess both technical and soft skills and be more tech-savvy. Also, educational institutions must innovate their academic curriculum to overcome the challenges posed by this era of digitization. The ability to work effectively with clients and present complex issues in simple language to clients is also a skill that needs to be inculcated in students.¹⁰

AI Use in Ghana

On March 18, 2024, the then Minister of Finance, Dr. Mohammed Amin Adam, confirmed the significant return on investment that AI could bring to Africa during the "AI as a catalyst to transform economies in Sub-Saharan Africa" conference. He added that Ghana is collaborating with partners such as the World Bank and IMF to fund AI projects, including developing national AI strategies tailored to Ghana's unique needs.¹¹ This presents the Ghana Revenue Authority (GRA) with an opportunity to take a proactive approach to regulate AI use in tax processes and to protect taxpayers. The GRA must consider the following recommendations before incorporating AI into Ghana's tax administration:

- **Data Collection:** The type of data that AI models are trained with is as crucial as the other factors to consider. AI depends on the information it is built with to generate outcomes; hence, the fundamental step in the implementation process is to collect a large amount of data that is diverse, reliable, and unbiased, including data about taxpayers, tax returns, and financial transactions so that there are adequate data points for appropriate correlations and variations to be drawn.
- **Continuous Monitoring and Evaluation:** Every AI tool is susceptible to some errors due to the dynamic nature of the tax landscape. Frequent monitoring and retraining of the AI systems will be essential to improve their accuracy. This may mean either updating the data it was built with, or the criteria the models use for decision-making. In this regard, the GRA should set a specific period to review and retrain the AI once it is being utilized. Likewise, the GRA would have to ensure the principles of datasets apply at every stage of the development and use of the AI.¹²
- **Legal and Ethical considerations:** Another recommendation is that the GRA considers ethical and other legal regulations including the Data Protection Act, and any other data privacy regulations to ensure that the data collected is processed in accordance with these regulations. One way this can be implemented is by amending the Data Protection Act, 2012 (Act 843) to cover AI and its associated risks, protecting both taxpayers and the administration and ensuring regulatory compliance.

9 K. Miller, 'Stanford University Human-Centered Artificial Intelligence' (Privacy in an AI Era: How do we protect our personal information? March 18, 2024) < <https://hai.stanford.edu/news/privacy-ai-era-how-do-we-protect-our-personal-information> > accessed at 24 December 2024

10 Yerun, 'Evolution or obsolescence: Artificial Intelligence and the tax practitioner' (Young European Research Universities Network, 26 April 2024) < <https://yerun.eu/2024/04/evolution-or-obsolation-artificial-intelligence-and-the-tax-practitioner/> > accessed 27 December 2024

11 Ghana charts collaborative path to Catalyse AI for Africa's development (2024) Ministry of Finance | Ghana. <<https://mofep.gov.gh/news-and-events/2024-03-19/ghana-charts-collaborative-path-to-catalyse-ai-for-africas-development>> accessed: 2 December 2024.

12 M. Azuaje, 'Artificial Intelligence in the Field of Tax Administration' <<https://www.riiel.com/index.php/riiel/article/view/90/100>> accessed 13 December 2024

- **AI Education:** To boost taxpayers' trust in AI tools, the GRA has the responsibility to educate these users on the appropriate ways to use such tools to minimize mistakes. This could include step-by-step AI guidelines and workshops. There is also the need to educate taxpayers on AI systems, how they work, and where they should and should not be applied.¹³
- **Provision for Usage Limitation:** The GRA should collaborate with the Cyber Security Authority (CSA) and other relevant organizations to provide restrictions on the use of AI. The Information Commissioner's Office and the Alan Turing Institute have published various recommendations on the limitations on the use of AI, GRA should consult these and other recommendations to help the GRA set out circumstances where the use of AI is restricted before its deployment in our tax administration. A practical example of countries legislating for the use of AI is Germany, the country has adopted s.88(5) in its Fiscal Code (Abgabenordnung) which clearly states the minimum requirement for the use of risk management systems.¹⁴

13 C. Bruckner and C. Coil, 'AI and the Modern Tax Agency: Adopting and Deploying AI to Improve Tax Administration' (2024) <<https://www.businessofgovernment.org/sites/default/files/AI%20and%20The%20Modern%20Tax%20Agency.pdf>> accessed 15 December 2024

14 K. Nathwani, 'Artificial Intelligence in Automated Decision Making in Tax Administration' (Institute for Fiscal Studies 2024)



The Obstacles of Litigating Global Commercial Agreements in Ghanaian Courts

Prince Omame Boateng

Introduction

In today's globalized world, international contracts play a pivotal role in Ghana's commercial arena. However, when disputes arise from these agreements, litigating them within Ghanaian courts poses distinct challenges. This article delves into the primary obstacles encountered by legal professionals handling international contract disputes in Ghana and offers practical strategies to address them effectively.

Primary Obstacles

The primary obstacles typically encountered during the litigation of international contracts include:

a. Complexities of Jurisdiction

One of the initial challenges in litigating international contracts involves establishing whether Ghanaian courts have jurisdiction to adjudicate the case. The current trend in most international contracts is the inclusion of a provision for either arbitration or jurisdiction and a choice of law clause.

A court's jurisdiction fundamentally refers to its legal authority to resolve disputes. In essence, it is the court's power to officially and lawfully hear and decide cases brought before it.

The Jurisdiction of the High Court in Ghana to hear and determine disputes between parties is imposed by the 1992 Constitution and other Statutes¹⁵.

A court, being a creation of the Constitution or statute, draws its jurisdiction solely from constitutional or legislative provisions. The issue of jurisdiction is crucial in every legal

¹⁵ Articles 125, 140(1) of the 1992 Constitution of The Republic Of Ghana, Section 15(1) of the Courts Act, 1993, Act 459 as amended by Courts (Amendment) Act, 2002, ACT 620 and Courts (Amendment) ACT, 2004 ACT 674

proceeding and must be examined by the court on its own, even if the parties do not raise it, to guarantee the legitimacy of its final judgment.

It has been frequently established by the Ghana Supreme Court that the issue of jurisdiction goes to the root of any case hence if a Court lacks jurisdiction and decides to hear a matter despite the lack of jurisdiction, whatever outcome is reached by the said Court will be void and of no legal effect.¹⁶

b. Arbitration/ Jurisdiction/Choice Of Law Clause in International Commercial Agreements

In contemporary international commercial contracts, it is now common practice for legal professionals to incorporate provisions addressing potential disputes related to the interpretation or execution of the parties' obligations. In the writer's view, the legal framework and principles guiding instances where dispute resolution clauses mandate arbitration are well established. The Supreme Court has established that Courts must strive to uphold dispute resolution clauses in the agreement¹⁷ unless, of course, a referral to arbitration is not ideal due to the lapse of time in raising the objection or any of the parties have by their conduct either expressly or by implication shown that they do not intend for their matter to be referred to arbitration¹⁸. However, the courts have again adopted a strategy whereby if the court determines that the matter before it pertains to the recovery of an undisputed sum of money, it may decline a request for referral to arbitration and proceed to resolve the matter directly¹⁹.

In the writer's view, challenges often arise when dispute resolution clauses mandate referral to courts outside Ghana's jurisdiction. These difficulties often stem from a common tendency, both among litigants and, in rare instances, the courts, to conflate the distinct concepts of **jurisdiction** and **forum**.

Jurisdiction, in essence, refers to the court's authority or legal competence to hear a case. It encompasses the court's power over the subject matter and the parties involved. On the other hand, a **forum** pertains to the most convenient or appropriate venue for the resolution of the dispute. In essence, the forum is concerned with the **location** that best suits the parties, evidence, and other practical considerations involved in the case.

While a court may have jurisdiction over a matter, another court might serve as the better **forum** due to factors such as the location of witnesses, availability of evidence, or the nature of the dispute. This distinction is frequently encountered in arguments involving the doctrine of **forum non conveniens**, where a party seeks to transfer the case to a more suitable jurisdiction.

A court may have jurisdiction to hear and determine a particular cause or matter but may not necessarily be the appropriate forum to determine the issues in controversy probably due to the effect of Jurisdiction and or Choice of law clauses incorporated into the agreement between the parties.

c. International Agreements with Jurisdiction or Exclusive Jurisdiction clauses

Many legal professionals may prefer to refer disputes arising from international agreements to courts in foreign jurisdictions rather than the High Court of Ghana. These agreements often

¹⁶ Abel Edusei v. The Attorney-General & The Director, Bureau Of National Investigations (BNI) [1996-1997] SCGLR 1

¹⁷ BCM Ghana Ltd. v. Ashanti Goldfields Ltd. (2005-2006) SCGLR 602 at 611

¹⁸ De Simone Ltd V Olam Ghana Ltd [2018 - 2019] 1 GLR 679

¹⁹ Larry Ettah V 1. Wonda World 2. Nana Kwame Bediako Civil Appeal No. Suit No. H1/52/2023 CA (Unreported)

include jurisdiction clauses designating foreign courts as having authority to resolve disputes related to the agreement. While Ghanaian courts generally honor these clauses, litigators frequently face challenges when one party resists the exclusion of local judicial oversight. The case of ***Magna International Transport Limited v. Ghana Telecommunications Ltd***²⁰ exemplifies the procedural complexities that arise when objections to jurisdiction or forum are raised. In this case, the defendant argued for the enforcement of the foreign jurisdiction clause, asserting that the dispute should be referred to the designated foreign court, as specified in the contract. The defendant contended that the clause was clear, binding, and applicable to the dispute.

The procedural challenges included the application of **forum non conveniens** (whether Ghanaian courts were the most appropriate forum) and the enforceability of foreign jurisdiction clauses. Despite the clear terms of the clause, the Ghanaian court had to determine whether enforcing it would be just, considering whether the case had significant connections to Ghana and whether local judicial oversight was necessary.

Typically, these issues should be resolved at the preliminary stage, but the court found that the defendant had wrongly sought to set aside the writ. The defendant should have pleaded the foreign jurisdiction clause in its statement of defense. This highlights how the determination of preliminary matters, especially in commercial transactions, can cause delays and complicate proceedings.

In determining whether a court has jurisdiction or if it is the appropriate forum to adjudicate disputes, especially when a contract involves foreign elements, such preliminary determinations can significantly slow down the litigation process and increase costs for clients. This becomes particularly problematic in cases where a party seeks urgent interlocutory relief to mitigate losses under the agreement.

d. Conflicts on Applicable Law

Many international agreements incorporate a "choice of law" clause, which designates the legal jurisdiction governing the contract. When Ghanaian courts are tasked with interpreting contracts under foreign laws, it introduces significant complexities to the litigation process. Courts may require expert testimony on these foreign laws, leading to increased costs and delays. Additionally, navigating foreign statutes while ensuring adherence to local regulations, such as Ghana's Contracts Act, adds further challenges. In some rare occasions, there is the likelihood of the Court may mistakenly interpret the "choice of law" clause as addressing jurisdiction or forum selection, compounding the legal intricacies.

For example, under Ghanaian private international law, courts do not take judicial notice of foreign laws. These laws must be pleaded and proven at trial as questions of fact, often requiring detailed evidence²¹. This rule adds another layer of complexity when Ghanaian courts are asked to apply foreign law in resolving disputes arising from international agreements.

Balancing the application of foreign laws with Ghana's legal principles can create conflicts of interpretation, potentially leading to protracted litigation. This challenge is especially pronounced when courts seek to uphold local legal standards while simultaneously interpreting foreign statutes, further extending timelines and increasing the legal burden on the parties involved.

²⁰ The Republic V. High Court Accra; Ex-Parte Magna International Transport Ltd; Ghana Telecom As (Interested Party) [2017-2018] SCGLR 1024

²¹ Godka Group Of Companies V. P S International Ltd [1999-2000] 1 GLR 409

e. Executing Judgments from Foreign Jurisdictions

Even when parties choose to litigate disputes in foreign courts, enforcing those foreign judgments in Ghana poses distinct challenges. The enforcement process is governed by the **Courts Act of Ghana** and the **Judgments and Maintenance Orders (Reciprocal Enforcement) Instrument, 1993 (L.I 1575)**,²² which mandates reciprocity between Ghana and the country that delivered the judgment. For instance, where it may be less challenging to enforce a judgment from a Court in the United Kingdom or the United States of America, same cannot be said about a judgment from The Republic of Korea. If this requirement of mutual recognition is not met, enforcing the judgment becomes problematic, compelling litigants to re-litigate the matter within Ghanaian courts. The unpredictability of enforcing foreign judgments can weaken the effectiveness of international agreements, causing parties to hesitate in engaging in cross-border trade.

f. Availability of Evidence and Witnesses

Gathering evidence and securing witnesses from foreign countries presents significant hurdles. The Ghanaian Courts require documents to be authenticated, a process that can be difficult for foreign parties to navigate. Coordinating witness testimonies in Ghana, whether in person or via video conferencing, often incurs substantial costs and logistical challenges. Moreover, Ghanaian courts may have limited experience with specific forms of evidence, particularly in specialized fields like technology and, oil and gas, which can complicate the evaluation of such evidence and lead to procedural delays or even wrong evaluation of evidence. This can further extend litigation timelines and increase the cost of resolving international disputes.

g. Time Lapses and Expenses

Litigation process in Ghana can sometimes be slower than anticipated, with cases occasionally taking several years to resolve. This can be particularly challenging for international contracts, especially when dealing with perishable products or agreements with strict timelines. The costs associated with prolonged litigation, as well as the unpredictability of court scheduling, may lead some foreign companies to hesitate in seeking legal remedies through Ghanaian courts, even when there are significant connections to the jurisdiction. Additionally, if jurisdictional objections arise, it may result in even further delays to the final determination of the case.

h. Possible Variations in Cultural and Legal Norms Across Jurisdictions

Cultural and legal differences between parties can add complexity to international contract litigation. While Ghanaian courts follow the common law system, based on English law, there are notable distinctions due to Ghana's unique statutory frameworks, cultural influences, and local judicial interpretations. These differences can affect how legal principles are applied, which may sometimes lead to different interpretations of contractual terms or expectations. Additionally, varying business cultures and dispute resolution practices in different jurisdictions can influence negotiations and settlement processes. As a result, aligning international business expectations with Ghanaian legal practices, while occasionally challenging, is crucial in international commercial transactions.

²² The Courts Act of Ghana, 1993, S. 81 and Foreign Judgments and Maintenance Orders (Reciprocal. Enforcement) Instrument, 1993

Strategies for Overcoming Primary Obstacles

Despite the numerous challenges stated above in this article, it is the writer's opinion that Ghana's legal framework provides some avenues to navigate the complexities of litigating international contracts. Legal practitioners should adopt the following strategies:

a. *Effective Contract Drafting*

It is well-established that the most effective commercial agreements are those that minimize the likelihood of disputes arising from the performance of contractual obligations. To minimize the risk of disputes in international commercial agreements, it is essential to include clear provisions for dispute resolution and risk mitigation. International contracts often involve parties from diverse legal, economic, and cultural backgrounds, which can lead to misunderstandings or disagreements.

To minimize court disputes:

- i. Ensure jurisdiction and choice of law clauses are clear and unambiguous, anticipating potential defaults and developing strategies to mitigate risks. For perishable goods or time-sensitive matters, include provisions for protective orders and strict timelines.
- ii. Lawyers should include clauses that anticipate potential obstacles, such as difficulties in evidence collection or enforcement of judgments. This can include provisions requiring parties to provide relevant documents within specified time frames or requiring cooperation in enforcement.
- iii. Additionally, practitioners should prioritize incorporating sufficient security measures and guarantees within the contract to safeguard the enforcement of judgments, ensuring that the victorious party can efficiently recover any awarded damages without facing unnecessary obstacles.
- iv. Practitioners may insist on incorporating bank guarantees and letters of credit into international agreements to secure their clients' interests. Additionally, parties can leverage on the Collateral Registry established by the Bank of Ghana to register and safeguard their interests in movable and immovable assets involved in international commercial transactions.
- v. Practitioners should also endeavor to work with local counsel who are familiar with Ghana's judicial system, procedural rules, and commercial laws. This ensures that dispute resolution clauses comply with local requirements and that any nuances in the local law are properly addressed.
- vi. Practitioners should also consider incorporating risk-sharing clauses, such as force majeure, limitation of liability, or indemnity clauses, to allocate or limit the risks each party faces during the performance of the contract and in the event of litigation. These clauses help protect parties from unforeseen events, liability exposure, and ensure that one party is indemnified for losses caused by the other, thereby reducing uncertainty and potential financial burden.

These tools ensure that, in the event of a default, parties have access to secured assets, reducing the risk of financial loss and providing greater assurance in cross-border dealings.

b. Currency and Payment Terms

There must be the inclusion of provisions that address currency exchange rates, payment methods, and how currency fluctuations will be handled. This prevents payment disputes, particularly in Ghana where exchange rate volatility could affect the value of transactions

c. Opting for Arbitration

Whenever feasible, parties should consider arbitration for quicker resolution, greater flexibility, and international enforceability under the New York Convention, a treaty to which Ghana is a signatory and has since ratified into domestic law.

d. Pre-Litigation Conference and Negotiation

Promoting pre-litigation negotiation or mediation can reduce the courts' workload and offer a quicker resolution for international disputes. Practitioners should include a multi-step dispute resolution clause, beginning with negotiation, followed by mediation, and, if necessary, litigation or arbitration. Notably, in both negotiation and mediation, any settlement agreed upon and documented in terms of settlement becomes binding between the parties, with the same effect as an arbitral award.

Conclusion

Litigating international contracts in Ghana presents substantial challenges, particularly in relation to jurisdiction, enforcement of foreign judgments, and the associated costs. However, these hurdles can be mitigated through strategic planning, thorough negotiation, and effective legal frameworks. As Ghana continues to solidify its position in the global economy, the demand for efficient dispute-resolution mechanisms will only increase. Thus, it is imperative for legal practitioners to gain expertise in navigating the intricacies of cross-border litigation.

In the writer's respectful view, all courts in Ghana should be aligned on distinguishing between cases requiring interpretation of commercial agreement provisions and those involving straightforward claims. This approach would help avoid unnecessary referrals to forums specified in arbitration or exclusive jurisdiction clauses, thus expediting dispute resolution and improving judicial efficiency.



Navigating Regulatory Factors for Cross-Border Transactions: A Guide for Businesses in Ghana

Nana Akua Ayarkwa Baah

Introduction

Have you ever considered acquiring goods, or services, or entering into an agreement with a company, entity, or even an individual outside of Ghana? Did you find yourself uncertain about the steps involved in the transaction or the legal requirements and considerations? If you have felt uncertain about how to navigate the process, you're not alone. It's a complex area for many. This article seeks to help resolve that confusion and guide you through the key legal considerations involved in entering a cross-border transaction.

What are cross-border transactions?

Cross-border transactions can simply be defined as any transfer of property, goods, or services between individuals or business entities located in different jurisdictions. Such transactions can range from something as straightforward as purchasing products online from China to more intricate arrangements like multi-tiered joint venture investment structures in another country.

This article will explore the key legal considerations you need to understand before engaging in a cross-border transaction or agreement.

Key Legal Considerations for cross-border transactions

When engaging in cross-border transactions, understanding key legal factors is crucial for ensuring successful dealings. Contracts provide the framework for defining rights, obligations, and expectations between parties. Dispute resolution mechanisms ensure that conflicts can be resolved efficiently. Tax implications must be carefully evaluated to comply with local and international tax laws. International conventions establish common legal standards that may influence agreements and transactions. Currency selection addresses the financial stability and exchange risks involved in cross-border payments. Lastly, data protection laws safeguard sensitive information and ensure compliance with regulations in multiple jurisdictions.

These critical points are further discussed below to guide you in navigating the complexities of cross-border transactions:

a. The role of contracts in cross-border transactions

Let us begin by discussing the role of contracts in cross-border transactions. When entering into a contract with an entity in a different jurisdiction you must take into consideration the varying legal systems among various jurisdictions. Different jurisdictions have unique regulations that can affect your contractual obligations. Understanding the differences between the legal systems involved is crucial. For example, in a contract between a company in Ghana and another in Japan, it will be beneficial to know that Ghana follows a common law legal system, while Japan uses a civil law system. As a business owner engaging in a cross-border transaction, it is essential to familiarize yourself with the distinctions between the various legal systems. Contract laws are likely to vary between jurisdictions. To ensure fairness, it may be beneficial to choose a jurisdiction with a well-established legal framework to govern the contract. Ideally, this should be a jurisdiction where you are familiar with the relevant contract laws and the specific legal principles related to the business or subject matter of the agreement. The contract should clearly specify which country's laws will govern the agreement and where any legal disputes will be resolved.

b. Dispute Resolution

Dispute resolution mechanisms should also be key instruments in contracts on cross-border transactions as they determine how disagreements between parties will be resolved when they arise. A cross-border transaction contract should contain a clause that focuses on dispute resolution mechanisms. A dispute resolution clause should outline the agreed process by which disputes will be settled. The main methods usually include arbitration, mediation, and litigation. It is important to note three important things in a dispute resolution clause:

- i. the method of the dispute resolution, which as mentioned is usually arbitration, mediation, or litigation;
- ii. the forum: the place or country in which the dispute will be resolved. Forum selection in contracts is very important as it helps eliminate uncertainty over where disputes will be heard. For example, as a Ghanaian entity, a contract between your entity and a foreign entity may specify that any disputes will be resolved in Ghanaian courts, or in the courts of a neutral third country. This clause helps prevent one party from unilaterally filing a lawsuit in a jurisdiction favorable to them.
- iii. The last key point to consider is the governing law that will apply to the contract. As a Ghanaian entity dealing with a foreign entity, you may want to choose a neutral law to govern the contract so as not to make one entity have an advantage over the other.

c. Tax Implications

The next key consideration in cross-border transactions is the tax responsibilities and implications on cross-border transactions. One of the primary tax concerns in cross-border transactions is double taxation, where the same income is taxed in two different jurisdictions. For example, if a Ghanaian company earns income from an entity in another jurisdiction like the UK, that income might be taxed both in Ghana and in the UK. To avoid this, many countries

usually sign Double Taxation agreements with other countries.²³ A tax treaty otherwise known as a Double Taxation Agreement is a bilateral agreement between two countries to ensure that a resident of one or both of the contracting states is not taxed twice on the same income in both jurisdictions or unduly benefit from not paying appropriate taxes in any of the countries through tax evasion or avoidance.

Ghana has double Taxation Agreements with the following countries: Belgium, Czech Republic, Denmark, France, Germany, Italy, Mauritius, Morocco, Netherlands, Qatar, Singapore, South Africa, Switzerland, and the United Kingdom. These agreements ensure that, for instance, if a Ghanaian entity conducts business with an entity in the UK, the same income will not be subject to taxation in both countries. When engaging in cross-border transactions, it is crucial to be aware of the countries that have signed Double Taxation Agreements with Ghana, as this helps prevent double taxation on your income.

Continuing with the tax implications, we will now address Value Added Tax (VAT) on imports and withholding taxes. For cross-border transactions involving the import of goods, Ghana imposes customs duties, VAT, and other import levies. The customs duty rates vary based on the type of goods being imported, while VAT is charged at the standard rate of 15%. The customs duty rates vary depending on the type of goods being imported. Also, non-residents earning income in Ghana are subject to withholding taxes, which may be reduced if Ghana has a Double Taxation Agreement with the respective country. In such cases, the provisions of the Double Taxation Agreement will apply. However, if no Double Taxation Agreement exists between the two countries, the local tax laws of Ghana will govern the taxation.

Cross-border transactions in Ghana involve several layers of tax considerations, including withholding taxes, VAT, and the risk of double taxation. As an entity or person in Ghana, you must understand their obligations under Ghanaian tax law and international tax treaties to ensure compliance and minimize tax liabilities. Proper tax planning can help businesses manage the complexities of cross-border transactions

d. International Conventions

We will now move on to International and Regional Conventions and agreements. International and regional conventions play a vital role in regulating and facilitating cross-border transactions, providing a legal framework for trade, dispute resolution, investment protection, and cooperation between countries. As an entity or business operating in Ghana engaging in cross-border transactions, understanding these conventions will help ensure your compliance with global standards and reduce legal risks. These agreements can also be used to your advantage.²⁴ Ghana for example recently signed a trade partnership agreement with the United Kingdom. The Agreement which replaced the interim Ghana-European Union Economic Partnership Agreement which governed trade relations between Ghana and the UK secures tariff-free and quota-free access for Ghanaian products to the UK market and preferential tariff reductions for UK exports to the Ghanaian market. As a business owner, it's beneficial to conduct transactions with jurisdictions that have such agreements with Ghana, as this will help streamline and simplify your transactions.

²³ Practice Note on Obtaining Double Taxation Relief under the Income Tax Act, 2015 (Act 896), 2024

²⁴ Ghana High Commission, 'Ghana signs Trade Partnership Agreement with the United Kingdom' (March 2, 2021) <ghanahighcommissionuk.com/GHANA-SIGNS-TRADE-PARTNERSHIP-AGREEMENT-WITH-THE-UNITED-KINGDOM> accessed 29 December 2024

e. Currency Selection

Another crucial factor to consider in cross-border transactions is the selection of currency. Currency plays a crucial role in cross-border transactions, particularly when trading between Ghana and other countries. The choice of currency and the exchange rates can significantly impact the transaction's profitability, pricing, and overall financial management. In cross-border transactions, it is crucial to specify the currency of the transaction in the contract to avoid disputes. Businesses can negotiate to choose the currency that is most stable or beneficial for both parties.

Ghana's currency, the Ghana Cedi, is not typically preferred for cross-border transactions due to its instability in the foreign market. Cross-border transactions are typically done with the major foreign currencies such as the United States Dollar or the British Pound. These currencies are widely accepted in international trade and using them helps Ghanaian businesses reduce currency risks and uncertainties. International suppliers and buyers are more likely to quote prices and demand payments in these stable foreign currencies. However, using these currencies goes along with compliance with Ghanaian laws. The Foreign Exchange Act, 2006 (Act 723)²⁵ prohibits the business of dealing in foreign exchange without a valid license²⁶. The Act describes foreign exchange to include the purchase and sale of foreign currency, receipt or payment of foreign currency, and the lending and borrowing of foreign currency.

f. Data Protection

The last legal consideration to be discussed is Data Protection in cross-border transactions. With the increasing reliance on digital systems and global connectivity, cross-border transactions often involve the transfer of personal data between jurisdictions. It is essential for businesses to ensure that the handling, processing, and transfer of this data comply with both Ghanaian data protection laws and international standards. Data protection in Ghana is governed by the Data Protection Act, 2012 (Act 843). This approach helps mitigate the risk of encountering legal issues across different jurisdictions. It is crucial to be well-versed not only in Ghana's data protection laws but also in the data protection regulations of the other jurisdictions where you plan to conduct business.

Conclusion

In conclusion, navigating the legal landscape of cross-border transactions requires a deep understanding of both Ghanaian law and international regulations. Key considerations such as the selection of jurisdiction, dispute resolution mechanisms, applicable tax laws, and currency choices are critical for ensuring smooth and successful international dealings. By carefully drafting contracts, adhering to Ghanaian law, and utilizing international agreements and conventions, you can mitigate risks and protect your interests when engaging in cross-border transactions.

²⁵ The Foreign Exchange Act, 2006, Act 723, s.3(1)

²⁶ The Foreign Exchange Act, 2006, Act 723, s.3(4)

D4

Recap of 2024!

WTS Ghana Celebrates 100% Certification Success for Data Protection Supervisor Trainees



WTS Ghana is licensed by the Data Protection Commission to deliver **Certified Data Protection Supervisor (CDPS) Training**. This program is specifically designed to equip professionals with the skills and knowledge required to fulfill the statutory responsibilities of Data Protection Supervisors, as mandated by Section 58 of the Data Protection Act, 2012 (Act 843).

The CDPS training is essential for officers nominated by their organizations to manage data protection compliance. It provides them with the expertise needed to effectively oversee data protection issues and secure licensing from the Data Protection Commission.

In 2024, WTS Ghana successfully trained over 110 professionals from various industries such as banking, mining, energy, technology, oil and gas, legal, finance and agriculture. We are thrilled to report a 100% pass rate for all participants in their certification exams with the Data Protection Commission.

By delivering such impactful training programs, WTS Ghana continues to uphold its commitment to fostering professional excellence, enhancing regulatory compliance, and strengthening organizational capacity across Ghana's diverse sectors.

Our training is conducted monthly over five intensive days, ensuring consistent opportunities for professionals to enhance their skills and meet compliance requirements.

Launch of our "Doing Business in Ghana" Guide!

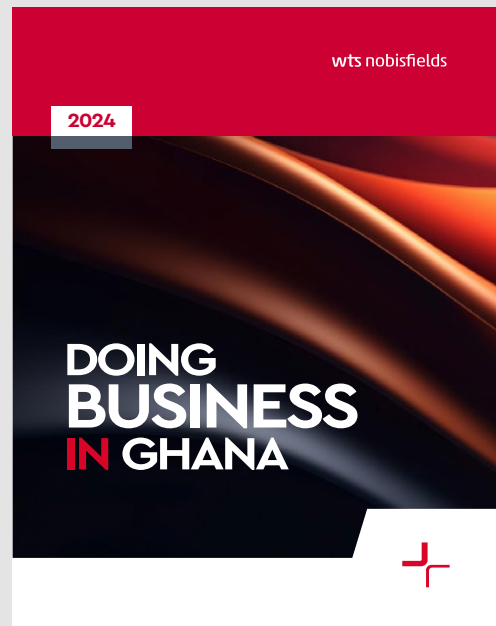
WTS Ghana proudly unveiled its latest edition of the **"Doing Business in Ghana"** guide at a prestigious launch event held at the Alisa Hotel. The guide, meticulously curated by the firm's experienced legal and tax professionals, offers comprehensive insights into Ghana's business landscape, regulatory requirements, and key opportunities for investors and businesses.

The launch featured an engaging panel discussion on the challenges of doing business in Ghana, with contributions from representatives of leading industries, including petroleum, commerce, investment, and manufacturing. The discourse shed light on practical strategies for navigating Ghana's regulatory environment and fostering sustainable business growth.

The event brought together stakeholders from the public and private sectors, including policymakers, business leaders, and entrepreneurs, reinforcing WTS Ghana's commitment to fostering collaboration and providing essential tools for business success.

This latest guide serves as a valuable resource for both local and international businesses looking to establish or expand operations in Ghana with a focus on legal, tax, and regulatory requirements.

For more information on obtaining a copy of the guide for free, please contact WTS Ghana.



Congratulations on Staff Promotions!

We are pleased to announce the promotion of our dedicated team members who have demonstrated exceptional commitment, professionalism, and leadership. Congratulations on this well-deserved achievement! Your hard work continues to inspire us all.



Francisca Essilfi
Tax Consultant



Wilhelmina Joana Buckman
Associate Director



Michael Tandoh
Tax Manager



Abraham Honour Otoo
Tax Manager



Rosemary Anakwa Boadu
Senior Associate



Prince Omane Boateng
Senior Associate



Winifred Arthur
Senior Tax Consultant



Kwaku Owusu Ofori-Amoah
Senior Tax Consultant



Paul Awuku Mantey
Senior Tax Consultant



Theophilus Kuwornu
Tax Consultant

WTS Ghana Highly Ranked in Legal 500 EMEA 2024

WTS Ghana earned high rankings in the Legal 500 EMEA 2024 across five distinct legal categories:

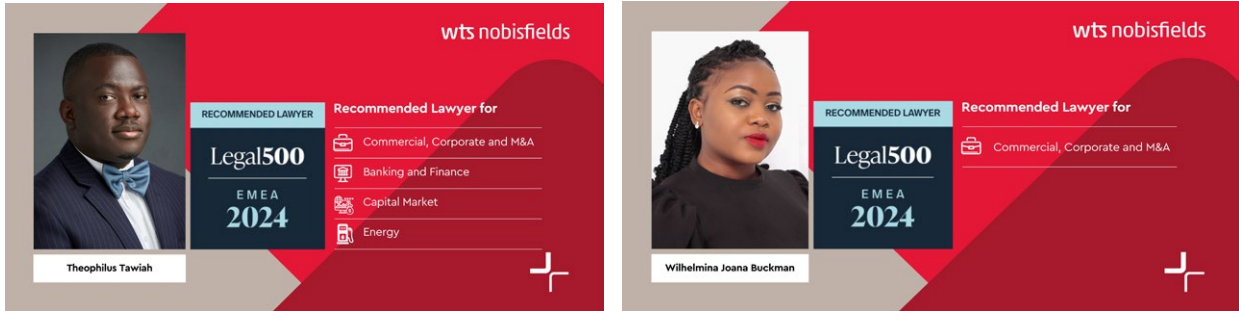
1. Banking and Finance
2. Capital Markets
3. Commercial, Corporate, and M&A
4. Dispute Resolution
5. Energy

This recognition underscores our firm's commitment to excellence and the trust our clients place in us. It reflects the hard work and expertise of our team in delivering exceptional legal solutions across diverse practice areas.



Employee Recognition in the Legal 500 EMEA 2024 Rankings

Our team members were ranked in the Legal 500 EMEA 2024. These individual rankings reflect the dedication, skill, and hard work of our professionals, whose commitment to excellence continues to drive our firm's success. We congratulate our ranked team members on this well-deserved achievement and look forward to their continued impact within the firm and across the industry.



Ranking in the 2024 ITR World Tax for Tax and Transfer Pricing

The ITR World Tax recognized WTS Ghana for our outstanding work in Tax and Transfer Pricing. This prestigious ranking reflects the hard work, dedication, and expertise of our team in delivering top-tier solutions to our clients.



Recognition of employees in the 2024 ITR World Tax Rankings

In 2024, we are proud to share that the ITR World Tax recognized several of our outstanding team members in its prestigious rankings. Our professionals were acknowledged in the General, Corporate Tax, Tax Controversy, and Transfer Pricing categories, marking a significant achievement for the firm.



A Heartfelt Thank You

As we reflect on the year, we want to express our deepest gratitude to our clients and employees for your unwavering support and trust. Your partnership and dedication are at the core of our success, and we are excited to continue reaching new milestones together in the coming year.

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Managing Partner

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