Doing Business in Ghana – a look at GIPC

The Ghana Investment Promotion Centre has modernised and is helping to maintain Ghana's reputation as welcoming and 'investment-friendly'; but Egality Law argue that the law underpinning it is archaic and needs to ease restrictions on market entry for foreign investors.

Ghana has in recent years been lauded as an attractive market for foreign investors. It enjoys a stable democracy, a relatively educated labour force and was named the fastest growing economy in the world according to the World Bank's Ease of Doing Business Report 2019.[1] In the same period, Ghana has been ranked the most peaceful country in West Africa, second in Africa and thirty-eighth globally in the Global Peace Index 2021.[2]

Despite this, those who know Ghana well will attest to the fact that Ghana's "PR" is sometimes better than the reality on the ground. Many public institutions remain bureaucratic and far from user-friendly. Computer automated regulatory authorities often have their networks down, and corruption remains a major (and growing) concern. These challenges are significant stumbling blocks to market entry for risk-averse foreign investors.

In this article, we focus on the key institution responsible for ensuring smooth and effective market entry for foreign investors - the Ghana Investment Promotion Centre (GIPC). Is this institution fit for purpose? Does it aid or impede market entry? What is the legal and regulatory framework and how straightforward is it to navigate?

A look at GIPC

GIPC should be instrumental to the growth of Ghana's economy, and its statistics are eye-catching. In the first half of 2021, GIPC reported involvement in 122 projects with a total estimated investment of $874.01 million. The FDI component from these investments amounted to $829.29 million, which is an increase of 32.15% over the FDI value of $627.52 million recorded in the same period in 2020.[3] GIPC has impressively been awarded Best Investment Promotion Agency in West and Central Africa five years in a row by Capital Finance International magazine.

So, what is the reality when doing business with GIPC? How effective is it as an institution? In assessing these important questions, we start with its challenges. These are several-fold.

Trade Barriers a blockade to growth?

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[1] ibid, https://gipc.gov.gh/218-2/invest-in-ghana/

[2] Ghanaweb, Global Peace Index, Ghana Ranked 1st in West Africa , 2nd in Africa and 38th globally, < https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Global-Peace-Index-Ghana-ranked-1st-in-West-Africa-2nd-in-Africa-and-38th-globally-1438063 >

[3] GIPC, Quarterly Investment Report, Half Year 2021 Report, January to June

Minimum capitalisation rules are a key component to regulating (and restricting) the entry of foreign companies or joint ventures with foreigners to Ghana. Under the GIPC Act, a company which is more than 10% foreign owned must bring a certain minimum amount of foreign exchange (or its equivalent value in goods) into the country to be able to set up in Ghana. This is known as minimum capitalisation.

The key rules are as follows:

- For a trading company (e.g., selling products), they must have a minimum capital of USD 1 million.

- A joint venture between a Ghanaian and a foreigner (i.e., where the foreigner owns not less than 10% of the company) requires the joint venture partners to bring USD 200,000 into Ghana.

- For any other type of company (such as a service like a call centre or financial advisory firm), the minimum capital requirement is USD 500,000.[4]

There are limited exceptions to these rules: the key ones being exemptions for enterprises set up solely for export or for manufacturing. These are useful exemptions but don't detract from the harsh rules that provide a significant barrier to foreign businesses seeking to enter the Ghanaian market.

Comparison with other countries

It is worth also looking at how the position compares with other countries. South Africa, one of the biggest economies on the continent, has few restrictions on foreign market entry except for some sector specific restrictions[5]. Nigeria maintains a much more modest NGN 10 million (approximately USD 24,000) minimum contribution for businesses with foreign participation[6]. Kenya requires foreign investors to contribute a minimum of USD 100,000 which it is currently considering reducing[7]. Many other countries, such as the UK and Brazil, have no such restrictions.

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[4] Ghana Investment Promotion Act of 2013(Act 865), Section 28,

[5] https://www.dlapiperintelligence.com/goingglobal/corporate/index.html?t=03-minimum-capital-requirement

[6] ibid

[7] https://www.businessdailyafrica.com/bd/economy/kenya-mulls-sh10m-capital-cap-for-foreign-firms-3351806?view=htmlamp

Why such an onerous rule?

The GIPC rules were clearly developed with the (perhaps) laudable aim of protecting the development of fledgling indigenous Ghanaian businesses from external competition and potential foreign exploitation. They may well have been a necessity post-independence, but are those rules fit for purpose in an age of the global economy? Such rules beg the question: should Ghana rather be encouraging collaboration between Ghanaians and foreign entrepreneurs and innovators (many of whom may be attracted to Ghana because they are of Ghanaian or African heritage)?

Prior to the current Act, the law in force was the Investment Code 1985 (PNDCL 116). It had more modest minimum capital requirements of USD 60,000 for joint ventures and USD 100,000 for wholly foreign owned companies.[8] These sums are approximately USD 150,000 to 200,000 in today's money. The Memorandum to the current Act does not set out the reasons for the increase in minimum capitalisation levels. It is difficult to see the current rules as being driven by more than a desire to deter all but the most substantial foreign businesses, and to attract foreign exchange into Ghana (and thereby use the Act as a means of strengthening the value of the Ghanaian Cedi).

Is the minimum capital requirement defeating GIPC's purpose, by deterring foreign investment? It is arguable that it is. While there may be a clear benefit in ensuring that Ghanaian businesses can thrive without being drowned by a large influx of foreign companies drowning them in the market, Ghana should consider striking a more effective balance to ensure that the market remains competitive and open to international collaboration. In our view, a larger flow of foreign investment into Ghanaian businesses is going to be more beneficial for the economy than forcing foreign companies to bring more foreign capital than they need when investing in Ghana.

What is the likely impact of the African Continental Free Trade Agreement (AfCFTA)

The GIPC Act's restrictions apply to all foreigners, irrespective of their nationality. Putting aside the compatibility of the law with the ECOWAS regime, a bigger question arises as to whether such rules are going to be compatible with (the impossible to pronounce) AfCFTA.

One of the objectives of AfCFTA is progressively to eliminate all non-tariff barriers on the continent, which have been said to include any obstacle encountered when trading goods

[8] Section 21 (1) of the Investment Code, PNDCL 116 (1985)

across intra-African borders[9]. The GIPC restrictions arguably fall into this category. If Ghana is serious about supporting a free trade regime on the continent, then the application of onerous minimum capital rules to investors from other African countries should be made a thing of the past.

GIPC deserves credit for its customer experience

The above said, there are a lot of positives about GIPC that could be emulated in other government institutions. GIPC itself is a very welcoming and efficient office. It is responsive and its processes work in accordance with the timescales advertised. The registration process takes up to five working days from when the Centre is satisfied that all the required documents, proof of compliance with the minimum foreign equity capital requirement have been submitted and payment of the required fees for registration has been made.[10]

The GIPC recently set up an investor aftercare division to support businesses once they are registered. The division offers to assist in overcoming compliance and regulatory issues, mediate between government and investors and generally seeks to support in navigating day-to-day business challenges.[11]

We have been impressed with the efficiency of the Centre's email correspondence system, which is prompt, responsive and clear. The rules are also applied fairly and apparently without discrimination. Crucially, it is important to point out that the Centre seems able to get about its business without the issue of corruption rearing its ugly head, in the experience of the authors.

The Centre deserves the plaudits it has received. It is not responsible for the difficult legal environment and hurdles to foreign investment. It has to work with the GIPC Act, and it is doing a good deal to encourage investors, notwithstanding the challenges they will face. Post-registration, the Centre operates an after-care service system through which investors may seek its assistance on matters relating to their established businesses in Ghana. See< https://gipc.gov.gh/investor-aftercare/ >

Recently GIPC also set up a diaspora help desk to enhance dialogue, provide advice, support and assistance to the diaspora on matters relating to investments and business opportunities.

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9 <https://tradebarriers.africa/>

10 Ghana Investment Promotion Act of 2013(Act 865), Section 24(2),

11 UKGCC, Mandatory Regulatory Compliance for businesses in Ghana The GIPC Act, 2013 (Act 865) <*https://ukgcc.com.gh* › bfd_download › mandator...

[12] > https://gipc.gov.gh/functions/> What would go further would be an amendment to the law to drop trade barriers for people living in the diaspora in the first place.

Conclusion

GIPC's work is commendable, and its effort to promote foreign investment into Ghana is impressive. That said, the minimum capital requirement is an archaic and unnecessary barrier to building foreign investment. The rule should be scrapped and conditions made more favourable for foreign investors, which will lead to more benefits to the economy (including foreign exchange) from the plethora of additional investors who are likely enter the market and generate revenue and jobs.

GIPC should issue a consultation paper to the public on amending its law. More imaginative commitments should be sought from foreign investors entering the market, including waivers for developing innovative, clean energy or sustainable businesses, those that create jobs for under-privileged or minority groups, and those that bring educational, human rights or other benefits to Ghana.

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[12] UKGCC, Mandatory Regulatory Compliance for businesses in Ghana The GIPC Act, 2013 (Act 865) < https://ukgcc.com.gh › bfd_download › mandator...>