

## 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registrations, reporting, technology transfer agreements, investment guarantees, offences and penalties are largely outdated and present challenges in the fulfillment of the mandate of the Centre.

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.

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.

*Clauses 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.

*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 Ghana Investment Promotion Centre Board 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*

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 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 867 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. 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 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.

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:

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

### **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;

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.”.

- (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**";
- (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.



(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;

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

**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".

(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 by the substitution for subsection (1) of section 42, 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."

(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";

- (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;
  - (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."