

MAS 151

Business in Ghana

LEGAL SYSTEM AND REGULATORY BODIES

Understanding Institutions and Business

✚ Institutions provide rules of the game.

- ✚ Douglass North (2005) defines institutions as “the humanly devised **constraints** that structure human interaction”
- ✚ Institutional framework is made up of both the **formal and informal rules/regulations** governing individual or firm behaviour
- ✚ Scott () identifies 3 pillars that support institutions namely;
 - ✚ **The regulatory pillar**
 - ✚ **The normative pillar**
 - ✚ **The cognitive pillar**

Dimensions of institutions

Degree of formality	Example	Supportive Pillar
Formal institutions	Laws, Regulations, Rules	Regulatory (coercive)

Informal
institutions

Norms, culture,
Ethics

Normative/
cognitive

Understanding Institutions and Business

- ✚ Institutions include laws, regulations and rules.
- ✚ Domestically, they are imposed by the **government of Ghana**.
- ✚ In terms of global business, they may be imposed by home **countries** or **host countries** and or **bilateral or multilateral protocols**

- ✦ The primary pillar of formal institutions is the **regulatory pillar**.

That is to say the coercive power or force of the state (Government) to enforce the rules of the game as far as business is concerned.

- ✦ e.g., Ghana does not allow foreigners into retail business

- ✦ e.g., ban on small-scale mining activities

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✚ This rule on non-participation of foreigners in retail business and others are defined by **acts of parliament, codes and other regulatory mechanisms.**

✚ In south Africa, firms whether domestic or foreign must obey the rules of the state that set targeted quotas and timetables in terms of **Black Ownership, Executive Position, and Employment (BEE) ratio.** Firms that fail to meet the **BEE** targets have to pay fines and are disqualified from Government contracts.

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✦ Informal institutions on the other hand include **norms, culture and ethics**. They are supported by the **normative and cognitive pillars**

✦ The **normative pillar** refers to how the values, beliefs and actions; collectively known as **NORMS** influence the behaviour of firms within the state of Ghana and for that matter other states.

✦ *E.g., ban on noise making during the homowo festival*

✦ In the illegal mining example, the normative pillar suggests to be **quiet**, whereas the bold community members' actions are

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driven by their strong cognitive pillar regarding what is right and wrong.

Understanding Institutions and Business

✚ The **cognitive pillar** is the second supportive pillar for informal institutions. It refers to the internalized or taken-granted values and beliefs that guide firm behaviour.

✚ *E.g., concerned community members may report the destruction of livelihood resources in their communities by illegal miners.*

✚ Employees or individuals may not feel comfortable with organizational wrongdoing. In the case of the illegal mining example, some community members may not want to incur the displeasure of their traditional authorities who could be complicit in such activities. The members who report the illegal activities of the miners choose to follow their internalized personal beliefs of what is right by overcoming the social norm that encourages silence (e.g., talking against a chief means disrespect for authority).

What do institutions do?

✚ To reduce uncertainty

✚ Specifically, institutions influence firm behaviour by signaling what conduct is legitimate and what is not.

Why is it important to reduce uncertainty?

- ✦ Because uncertainty can be potentially devastating.
- ✦ **Political uncertainty** such as the tendency for coup can render long-range business planning impossible.
- ✦ **Economic uncertainty** such as failure to carry out transactions as spelled out in contracts between contracting parties may result in economic losses. The examples of numerous abrogation of contracts with change in government in Ghana are cases in point which can increase uncertainty for the business community.
- ✦ **Uncertainty during election** year because of the likelihood of violence affects business decision making.

Why is it important to reduce uncertainty?

- ✦ Uncertainty surrounding economic transactions can lead to **transaction cost** which are the costs associated with economic transactions or, more broadly, the cost of doing business.
- ✦ An important source of transaction cost is **opportunism**, defined as the act of seeking self-interest with guile (*cunning and deceitfulness*).
- ✦ Examples include **misleading**, **cheating**, and **confusing** other parties in transactions that will increase transaction costs.

What institutions do to reduce uncertainty

- ✚ Institutional frameworks increase certainty by spelling out **the rules of the game on business** so that violations (such as failure to honour one's part in a contract) can be mitigated with relative ease (such as through formal arbitrations and the judicial system)
- ✚ In the absence of **credible institutional frameworks** that protect investors, domestic investors may choose to invest their money abroad. An example is often cited of Russian entrepreneurs who chose to buy assets in London or Cyprus instead of investing in Russia.
- ✚ In Ghana, a tendency has been reported where investors pull breaks on their investment during election year or choose to invest in other jurisdictions.
- ✚ Institutions are not static, they are dynamic. Rules of the game on business change over time and space and it is imperative for businesses to keep their eyes on institutional reforms and adjust appropriately.

Political Systems (PS) and Business

- ✦ PS refers to the rules of the game on how a country is governed politically.
- ✦ Broadly, there are two forms of PS
 - ✦ **DEMOCRACY**
 - ✦ **TOTALITARIANISM**
- ✦ Democracy is a system in which citizens elect representatives to govern the country on their behalf.
- ✦ Totalitarianism (or dictatorship) is a political system in which one person or party exercises absolute political control over the rest of the people or citizens.

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DEMOCRACY: *less political risk*

Freedom of association and Free market, driven by well articulated and communicated institutions which define the rules of the game in business.



TOTALITARIANISM: **unpredictable political environment**

Common risks to business are **wars, riots, chaos and breakdown of order**. In extreme cases, it may lead to **nationalization** of domestic and foreign assets. Hence, opportunities depend on building personal network with the people in power and keeping them happy.

Legal systems and Business

- ✦ A legal system refers to the rules of the game on how a country's laws are enacted and enforced.
- ✦ By specifying the do's and don'ts, legal systems influence business by reducing transaction costs through minimizing uncertainty and opportunism.

Origins of Laws

✚Laws originate from three legal families namely;

✚CIVIL LAW

✚COMMON LAW

✚THEOCRATIC LAW

Common Law

- ✚ Common law, which is English in origin, is shaped by precedents and traditions from previous judicial rulings/decisions.
- ✚ Common law has spread to all English-speaking countries, most of which were at one time colonies of the British empire.
- ✚ Relative to civil law, common law has more flexibility because judges have to resolve specific disputes based on their interpretation

of the law, and such interpretation may give new meaning to the law, which will in turn define future cases.

Common Law

✚ Application of common law is more confrontational because plaintiffs and defendants, through their lawyers, must argue and help judges to favorably interpret the law largely based on precedents.

✚ In addition, contracts in common law countries tend to be long and detailed to cover all possible **contingencies** because common law tends to be relatively under-defined

Civil Law

✚ Civil law has less flexibility because judges have the power only to apply the law. Thus, civil law is less confrontational because comprehensive **statutes** and **codes** serve to guide judges.

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- ✚ **Statutes** are permanent established rules or laws, especially ones involved in the running of a company or other organizations.
 - ✚ **Codes** are accepted laws and regulations that govern procedure or behaviour in particular circumstances or within a particular profession.

Theocratic Law

- ✚ The third legal family is theocratic law, a legal system based on religious teachings.

✚ Examples include Jewish and Islamic laws. Although Jewish law is followed by some elements of the Israeli population, it is not formally embraced by the Israeli government.

✚ Hence, Islamic law is the only surviving example of a theocratic legal system that is formally practiced by some governments, including those in Iran and Saudi Arabia. See sharia law (<http://www.billionbibles.org/sharia/sharia-law.html>)

Theocratic Law: The legal system based on religious doctrine, precepts, and beliefs. For instance, the Hebrew law and the Islamic law are derived from religious doctrines and their scholarly interpretations.

Theocratic Law and Business

✚ Despite the popular characterization of Islam as anti-business, it is important to note that Mohammed was a merchant trader, and the tenets of Islam are pro-business in general. However, the holy book of Islam, the Koran, does advise against certain business practices.

✚ In Saudi Arabia, McDonald operates “ladies only” restaurants in order to comply with the Quran's ban on direct, face-to-face contact between unrelated men and women (e.g., why women wear veils) in public. Moreover, banks in Saudi Arabia have to maintain two retail branches: one for male customers staffed by men and another for female customers staffed by women.

Theocratic law and Business

✚ This requirement obviously increases property, overhead, and personnel costs.

✚ To reduce costs, some foreign banks staff their back-office operations with both male and female employees who work side by side.

Summary

- ✦ Overall, legal systems are a crucial component of the institutional framework because they form part of the first **regulatory pillar that supports institutions**.
- ✦ They directly impose do's and don'ts on businesses around the globe. A legal system is complex, and there are numerous components under its broad umbrella.
- ✦ Two of these are **physical property and intellectual property rights**.

I. Legal System

- ✚ There are laws governing the establishment and operation of businesses in Ghana.
- ✚ These laws are in accordance with the provisions made in legal legislations.
- ✚ The laws conform to international standards and best practice.

✚ The laws are based on a framework of legislation relating to business activity, copyrights, patents, trademarks, disputes and labour relations.

Legal System

✚ The Companies Act, 1963 (Act 179)

✚ Income Tax Act, 2015 (Act 896)

✚ Fisheries Act, 2002 (Act 625)

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- ✚ Petroleum (Exploration and Production) Law 2016, (Act 919)
 - ✚ Forestry Commission Act, 1999 (Act 571)
 - ✚ The Minerals Commission Act, 1993 (Act 450)
 - ✚ Minerals And Mining Act 2006, Act 703
 - ✚ Free Zone Act, 1995 (Act 503)
 - ✚ The Labour Act, 2003 (Act 651)

Legal System

- ✚ Foreign Exchange Act, 2006 (Act 723)
- ✚ Ghana Revenue Authority Act 2009, (Act 791)
- ✚ National Communications Authority Act, 2008, (Act 769)
- ✚ Banks And Specialized Deposit Taking Institutions Act, 2016, (Act 930)
- ✚ Environmental Protection Agency Act, 1994 (Act 490)

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- ✚ Copyright Act, 2005 (Act 690)
 - ✚ Trade Marks Act, 2004 (Act 664)
 - ✚ Patents Act, 2003 (Act 657)

II. Regulatory Bodies

- ✚ The investor, whether a Ghanaian or a foreigner, who wants to establish a resident business entity has to register with the Registrar General's Department (RGD) under one of the Acts named above

except where the entity is to operate in the country as a representative of non–resident business entity.

✚ In that case it does not go through the process of incorporation under Act 179 but simply submits the required documents to the Registrar who registers them in the **register of External Companies**.

Registrar General's Department

- ✚ The Registrar General's Department is under the Ministry of Justice & Attorney General's Department.
- ✚ The department is responsible for the **registration of businesses** and other related matters in Ghana.
- ✚ The first step for an investor wishing to invest in Ghana is to register with the **Registrar General's Department**.

Registrar General's Department

✚ Investors may apply for certificate of incorporation and certificate to commence business by completing and submitting a paper form at the **Company Registration Counter** or via online.

✚ Registrar General's Department charges application fee for incorporation and commencement of business

Registrar General's Department

- ✚ The department charges an additional stamp duty fee of **0.5% of the company's stated capital.**
- ✚ The official processing time lies between **three to five days**, after which the company will receive the certificate of incorporation and certificate to commence business.

Registrar General's Department

- ✚ After incorporation, companies that are partly or fully owned by foreigners have to register with the Ghana Investment Promotion Centre (GIPC).
- ✚ Registration is completed after companies have met the minimum equity requirements depending on their structure.

Registrar General's Department

✚ The required equity can be brought into Ghana either in money or in kind (goods, plant and machinery, vehicles or other tangible assets).

Ghana Investment Promotion Centre (GIPC)

✦ GIPC is established under the GIPC Act (Act 865 as amended) 2013 as the government agency responsible to encourage and promote investments in Ghana.

✦ GIPC initiates and maintains a favorable environment for both Ghanaian and foreign investment.

✦ GIPC provides for the creation of an attractive incentive framework and a transparent, predictable and facilitating environment for investments in Ghana.

Major Functions of GIPC

- ✚ Formulate investment promotion policies and plans, to attract foreign and local investments.

- ✚ Initiate and support measures that will enhance the investment climate in Ghana for both Ghanaian and non-Ghanaian enterprises.

✚ Initiate and organise in promotional activities such as exhibitions, conferences and seminars to stimulate and present Ghana as an ideal investment destination.

Major Functions of GIPC

✚ Register, monitor and keep records of all enterprises in Ghana and all technology transfer agreements.

✚ Collect, collate analyse and disseminate information about investment opportunities and sources of investment capital.

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- ✚ Bring about harmonisation in investment policy formulation through coordination of the activities of all other institutions and agencies.

Investment Procedures under GIPC Act (Act)

Step 1:

- ✚ Registration with Registrar General's Department to obtain the following:

- ✚ Certificate of Incorporation
- ✚ Certificate to Commence Business
- ✚ Company's Regulations

Investment Procedures under GIPC Act (Act)

Step 2:

- ✚ Minimum Equity Contribution for foreigners
 - ✚ Joint Venture - US\$ 10,000
 - ✚ 100% Foreign-Owned -US\$ 50,000
 - ✚ Trading Enterprises- US\$ 300,000

Investment Procedures under GIPC Act (Act)

Step 3:

- ✚ Registration with Ghana Revenue Authority and SSNIT
- ✚ All enterprises must register directly with the Ghana Revenue Authority for purposes of statutory tax (rebates and

Investment Procedures under GIPC Act

exemptions) and with SSNIT for the social security contribution of staff.

(Act)

Step 4:

✚ Environmental Impact Assessment Certificate

Investment Procedures under GIPC Act

- ✦ Enterprises must register to obtain an environmental permit from the Environmental Protection Agency (EPA).

(Act)

Step 5:

- ✦ Business Permit from the MMDAs

Investment Procedures under GIPC Act

- ✦ It takes approximately 7 days to get a business License to operate in the area
- ✦ Cost depends on the type of business and the category in which it falls.

Mineral Commissions

- ✦ The Mineral's Commission is regulated by the Minerals Commission Act, 1993 (Act 450).
- ✦ The Commission fosters the efficient and effective regulation and management of the utilization of Ghana's mineral resources.
- ✦ The commission issue mining licensees for small scale, large scale and industrial mining.

✚ Major minerals include gold, manganese, bauxite, and iron ore.

Ministry of Energy

✚ Ghana discovered its first oil in commercial quantities in 2007 at the jubilee Field.

✚ The Ministry of Energy is responsible for effective management of petroleum exploration and production in Ghana.

✚ Major legal and regulation regimes government petroleum management include

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- ✦ Petroleum (Exploration & Production) Law 2016, (Act 919)
 - ✦ Petroleum Revenue Management Act, 2011 (Act 815) as amended,
 - ✦ Petroleum Commission Act 2011(Act 821)

Ministry of Energy

✦ Sub-sectors

- ✦ The **Ghana National Petroleum Corporation (GNPC)** GNPC was established by an Act of parliament in 1983(PNDCL 64).

✦ The GNPC was established as a state-owned entity and given legal backing to undertake the exploration, development, production and disposal of petroleum.

✦ GNPC is Ghana's National Oil Company (NOC) which provides adequate and reliable supply of petroleum products.

Ghana National Petroleum Corporation (GNPC)

- ✚ The corporation was established with the following objectives:
 - ✚ Promotion of petroleum exploration activities.
 - ✚ Appraisal of existing petroleum discoveries to ensure production to meet national requirements.

✦ Ensure that Ghana obtains the greatest possible benefits from the development of its petroleum resources.

Ghana National Petroleum Corporation (GNPC)

✦ To obtain the effective transfer to Ghana of appropriate technology relating to petroleum operations.

✦ To ensure the training of citizens of Ghana and the development of national capabilities in all aspects of petroleum operations.

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- ✦ To ensure that petroleum operations are conducted in such a manner as to prevent adverse effects on the environment, resources and people of Ghana.

Petroleum Commission

- ✦ **Petroleum Commission** was established by an Act of Parliament, 2011 (Act 821) as a result of hydrocarbon discoveries in commercial quantities to regulate and manage the utilization of petroleum resources and coordinate the policies in the petroleum sector.

- ✦ Among others, the Petroleum Commission is to:

✦ Recommend to the sector minister, national policies related to petroleum activities.

Petroleum Commission

✦ Receive applications and issue permits for specific petroleum activities as required under the petroleum laws and regulations.

✦ Promote local content and local participation in petroleum activities as prescribed in the Petroleum Exploration and Production Act, 1984 (PNDCL 84).

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- ✚ Monitor petroleum activities and carry out the necessary inspection and audit related to petroleum activities.

Ghana Revenue Authority (GRA)

- ✚ The Internal Revenue Service, Value Added Service (VAT) and the Customs, Excise and Preventive Service which were separate revenue agencies, until about the last quarter of 2010 have been merged to form a single entity, the **Ghana Revenue Authority (GRA)**.
- ✚ The GRA has three divisions: **Domestic Tax Revenue Division**, **Customs Division**, and the **Support Services Division**.

Ghana Revenue Authority (GRA)

- ✚ The authority operates under the **Ghana Revenue Authority Act 2009, (Act 791)**.
- ✚ GRA mobilises sustainable revenue stream for government.
- ✚ The authority ensures trade facilitation and a controlled and safe flow of goods across the country's borders.

Ghana Revenue Authority (GRA)

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- ✦ **The Customs Division** is responsible for collecting customs duties and excise whereas **the Domestic Tax Revenue Division** takes care of income tax and VAT/ NHIL.
- ✦ **The Support Services Division** is responsible for all internal functions such as finance and administration, legal, human resource management etc.
- ✦ Each of the three divisions is headed by a Commissioner who reports to the **Commissioner-General of GRA.**
- ✦ Any investor in Ghana will necessarily have to register at one of the GRA offices to pay the required tax.

Environmental Protection Agency (EPA)

- ✦ The environmental Protection Agency (EPA) operates under the **Environmental Protection Agency Act, 1994 (Act 490)**
- ✦ Environmental Protection Agency is in charge of issuing the necessary environmental permits to companies operating in environment sensitive areas. E.G mining
- ✦ An investor must submit an environmental impact assessment report to the registrar general department as a requirement for the registration of the business.

Ghana Free Zones Authority (GFZA)

✚ The Ghana Free Zones Authority was established by the Act of Parliament -Free Zone Act, 1995 (Act 503).

✚ An enclave within which goods may be handled, manufactured or reconfigured and freely exported without the intervention of customs authority.

✚ In Ghana, businesses which operate within the free zones are accorded special incentives and privileges such as tax holidays.

Ghana Free Zones Authority (GFZA)

- ✦ The mandate of the Free zones is to create opportunity for potential investors to use the free zones as a focal point to produce goods and services for foreign markets.
- ✦ Any investor who will be producing to export at least 70% of its total output can take advantage of the Free Zones Act to get located within the Free Zone Enclaves at Tema or Sekondi or any part of the country as permitted.

Ghana Free Zones Authority (GFZA)

- ✚ Any investor who will be producing to export at least 70% of its total output can take advantage of the Free Zones Act to get located within the Free Zone Enclaves at Tema or Sekondi or any part of the country as permitted

- ✚ This will be after going through the registration processes already described above and then making an application to the Free Zones Board to be a free zone enterprise.

Ghana Free Zones Authority (GFZA)

✚ Free zone enterprises are exempt from tax on imports into the free zone as well as duty and other taxes on exports to foreign countries.

Ghana Free Zones Authority (GFZA)

✚ Free zone enterprises are exempt from corporate tax for a period of 10 years, and thereafter the corporate tax shall not exceed a maximum of 8% of profit.

Ghana Free Zones Authority (GFZA)

- ✚ Depending on the field of operation of the company, additional registration may be necessary with other regulatory bodies.

- ✚ Ghana Investment Promotion Center keeps track of all investments in the country while the Free Zones Board regulates enterprises that

export at least 70% of their produce and have been registered as free zone enterprises.

Examples of free zone enterprises in Ghana

✚ Wilmar Africa Limited, Ghana

✚ Ecosafe Ghana Limited

✚ Dalal steel industries limited

Sitos Ghana Limited