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AgCLIR: GHANA

Commercial Legal and Institutional Reform

Diagnostic of Ghana's Agriculture Sector

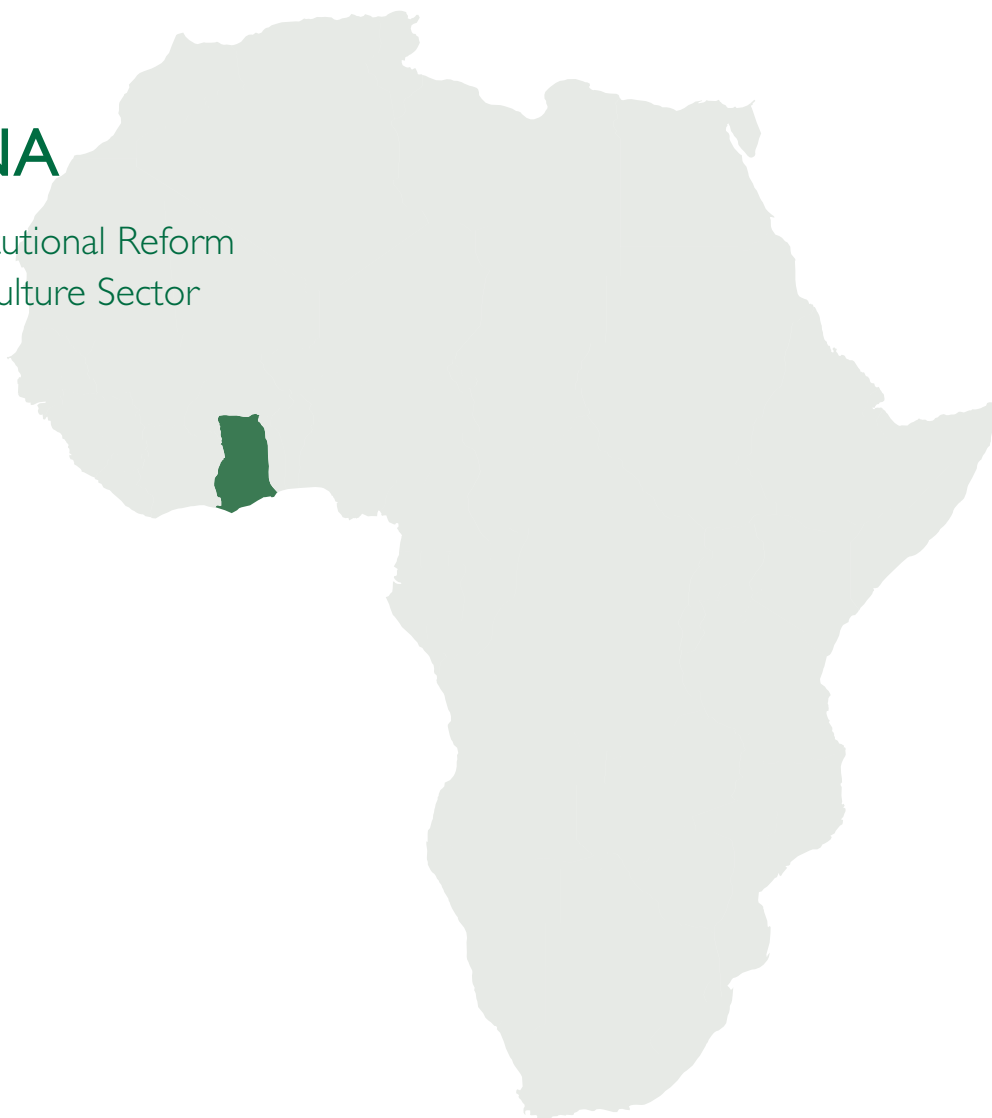


AgCLIR: GHANA

Commercial Legal and Institutional Reform
Diagnostic of Ghana's Agriculture Sector

AGENDA FOR ACTION

November 2008



DISCLAIMER

The views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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INTRODUCTION

This report addresses the conditions and opportunities for doing business in Ghana's agriculture sector. Through close examination of the relevant laws, institutions, and social dynamics, it aims to inform assistance decisions by the United States Agency for International Development (USAID) and other donors in the area of agricultural development in Ghana, as well as to provide insight and guidance about the sector to government officials, private sector representatives, and others. Specific recommendations are included at the end of each chapter and compiled in full in an appendix to this report. A list of priority recommendations is also set forth at the end of this Introduction.

AGRICULTURE IN GHANA: A KNOWLEDGE-BASED ACTIVITY

One key fact sets the stage for considering Ghana's journey out of poverty and into middle-class status. That is, in this West African nation of 23 million people (including a labor force of more than 9 million), at least 55% of the working population derives its living from the agriculture sector; most often as small farmers. There is a second and related key fact: Of the country's gross domestic product (GDP)—\$14.6 billion in 2007—more than 35% comes from agriculture.¹

Cocoa, of course, is the agricultural commodity at the heart of Ghana's economy, accounting for around two-thirds of the total value of Ghana's agricultural exports and at least one-third of *all* Ghanaian exports. "Ghana is Cocoa and Cocoa is Ghana" is the motto pronounced by Ghana's powerful and ably run Cocoa Board, which oversees the production, control of quality, and purchase of all cocoa grown by more than 1.5 million farmers. Along with gold and timber, cocoa is one of the Ghana's three celebrated "traditional exports."

Ghana's other major agriculture products for export include pineapples and refined sugar, which have both quadrupled in their export value during this decade, as well as palm oil, bananas, shea nuts (which add value both to food products and cosmetics), cashews, coffee, peanuts, and coconuts.² Backed by significant foreign investment, mangos constitute a new entry into Ghana's export arena, and are expected to become an important "non-traditional" export. Cotton, on the other

hand, was once a vibrant trade commodity but now languishes in a state of low productivity and poor quality.

In addition to cash crops, Ghanaian farmers grow food for their own people, mostly cassava, maize, yams, plantain, millet, rice, and various fruits and vegetables for local consumption. Low productivity on these farms is endemic, however, because, among other reasons, high-yielding, state-certified hybrid seed is rarely used; irrigation is remarkably underused; and poor storage facilities and infrastructure contribute to high rates of post-harvest loss. Although Ghana has a domestic poultry industry, it suffers greatly, its farmers contend, from foreign imports of poultry meat costing far less than a price they can match.

In Ghana, as in much of Africa, little of the processing of the goods it produces takes place within its borders, although the government is striving to improve this situation. There has been some growth in recent years in the country's industrial activities involving local crops, including increased processing of cocoa, tomatoes, and nuts; canning and juice operations; and brewing for local consumption and export. Although trade policy supports duty-free import of processing equipment, companies that would seek to process agricultural goods generally are constrained by costs and availability of needed imports, such as high-quality packaging materials that are not made domestically, as well as the high cost of electricity, which drives up the cost of production. They are further set back by the unreliability of their suppliers, bottlenecks at the port, and the uneven quality of the product they seek to enter into the processing or manufacturing stream.

¹ Statistics cited in this section derive from the UN Commission on Trade and Development/World Trade Organization's International Trade Centre's electronic library on International Trade Statistics, available at <http://www.intracen.org/tradstat/sitc3-3d/er288.htm>.

² Fish also represents another major food export, but is a product largely beyond the scope of this report's inquiry.

WORLD BANK DOING BUSINESS CATEGORIES			
	2009	2008	Change
<i>Doing Business Overall</i> (181 economies surveyed)	87	82	-5
Starting a Business	137	143	+6
Dealing with Licenses	142	139	-4
Employing Workers	145	144	-1
Registering Property	31	27	-4
Getting Credit	109	102	-7
Protecting Investors	38	33	-5
Paying Taxes	65	83	+18
Trading Across Borders	76	63	-13
Enforcing Contracts	50	50	0
Closing a Business	104	99	-5

As enunciated by a prominent agricultural economist in Ghana, "Agriculture is no longer a brute-force industry. It is a knowledge-based activity." This notion is critical to understanding the long-range prospects for the vast range of activities that take place on the journey from Ghana's farms to its domestic and international markets. The need for enhanced knowledge, and use of knowledge-based tools, concerns everything along with value chain, including the following:

- Quality of seed and fertilizer; and proper use of both;
- Use of irrigation;
- Ability of farmers to enter the formal sector as cooperatives or processing enterprises;
- Ability of agriculture enterprises, including farmer-based organizations (FBOs), to obtain credit and outside investment, as well as to observe and respect written supply contracts
- Management of post-harvest loss;
- Compliance with quality standards that represent key conditions for export;
- Transport of products to markets;
- Efficiency of border operations pertaining to agricultural goods;
- Prompt and effective resolution of disputes that arise along the value chain; and
- Understanding of how regional and international institutions, such as the Economic Community of West African States (ECOWAS) or the World Trade Organization (WTO), create both opportunities and obligations for Ghana with respect to building its commerce in agriculture.

Though most of these issues are as old as farming itself, international trends in agricultural science and food safety, legal and economic policy, and cross-border trade, among other disciplines, render agricultural knowledge and professional expertise more critical than ever.

Ghana has made recent, significant strides in some aspects of knowledge-building—most prominently, in the recent reforms of the legal underpinnings of its business environment—but, for various reasons detailed throughout this report—the country has languished with respect to others.

The past two centuries demonstrate that greater prosperity in a country translates to fewer people engaged in agriculture and smaller share of GDP derived from agriculture. Over the coming generations, this experience is likely to be realized in Ghana. Growth in agricultural productivity will increase incomes and improve health, permitting more Ghanaians to turn to skilled labor, entrepreneurship, and other sectors as the source of their livelihoods. But even as fewer Ghanaians work directly in agriculture, the sector can serve as a much stronger and more efficient driver of growth. To the extent that there are ongoing reforms in conditions for "doing business" in the agriculture sector—that is, for the pursuit of economic activity arising chiefly from domestic production of food and other agricultural resources in Ghana—the country will experience greater productivity, entrepreneurial opportunity, and international trade.

AGCLIR: A NEW TOOL FOR UNDERSTANDING THE AGRICULTURAL SECTOR

This report is the first of its kind, although it is based on a model long engaged by USAID. In 2007, incorporating lessons learned from its first-generation legal, institutional, and trade diagnostic tool called CLIR, USAID sponsored the redesign of CLIR through its Business Climate Legal and Institutional Reform (BizCLIR) project.³ The BizCLIR focus areas were designed to align with the structure of the World Bank's enormously influential *Doing Business* country reports.⁴ Based on the analytical structure created by the World Bank, BizCLIR employs a diagnostic process that closely examines the following 10 topics: Starting a Business, Dealing with Licenses, Employing Workers, Registering Property, Getting Credit, Protecting Investors, Paying Taxes, Trading Across Borders, Enforcing Contracts, and Closing a Business.⁵

3 Detailed information about BizCLIR can be found at www.bizclir.com.

4 See generally World Bank, *Doing Business 2009* (2008), and accompanying literature at www.DoingBusiness.org.

5 In its most recent survey, the World Bank changed the designation of the category "Dealing with Licenses" to "Dealing with Construction Permits," a change that more accurately reflects the scope of its survey. The AgCLIR methodology maintains its emphasis, however, on the licenses and permits that are required across agriculture value chains. Accordingly, the terminology has not been changed for this report.

THE AG-CLIR TEAM

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Since 2002, *Doing Business* has assisted countries in targeting where their regulatory environments may favor or interfere with economic growth. For each of the 10 topics it covers, the World Bank considers a few key indicia of whether and how the environment for doing business is “working,” measured by such means as the number of procedures involved in achieving a goal (e.g., enforcing a contract), the number of days it takes, and the costs of the procedures in relation to per-capita income. The World Bank now gathers data from 181 countries and ranks each, thereby demonstrating how their respective regulatory environments compare to others throughout the world. USAID’s BizCLIR initiative takes the same topics and delves far deeper into their respective legal frameworks, implementing and supporting institutions, and social dynamics. That is, while the World Bank delivers a snapshot of the “tip of the iceberg” in 181 countries, BizCLIR subjects the issues covered by *Doing Business* to a far more comprehensive analysis and then reports on the “entire iceberg.” BizCLIR seeks to understand the important contextual differences among countries and further identifies particular strengths and weaknesses within economies that provide key opportunities for the long term.

In the most recent *Doing Business* report, issued in September 2008, Ghana ranked 87th.⁶ Although Ghana slipped five rankings from the previous year, its placement is, in fact, strong for West Africa. In 2007, the World Bank recognized Ghana as one of the world’s “top reformers.”⁷

To date, BizCLIR has examined the overall environment for doing business in the countries it has surveyed. On a “pilot” basis, this diagnostic is the first

to apply the BizCLIR analysis to a single sector; in this case, agriculture—hence, the name “AgCLIR.” The focus on agriculture here stems from a critical consensus in recent years that GDP growth in agriculture has more than twice the impact in reducing poverty as growth in other sectors.⁸ Yet, while 75% of the world’s population lives in rural areas, most working in agriculture-related pursuits, only 4% of official development assistance goes to agriculture in developing countries.⁹ Similarly, in sub-Saharan Africa, only 4% of total government spending is directed toward farming communities.¹⁰ The goal of this pilot diagnostic is to better understand *why* Ghana’s agricultural sector functions as it does, *what* policy changes could lead the sector to greater productivity and economic growth, and *who* among Ghana’s economic actors must lead or implement change.

This diagnostic took place from August 18 to September 6, 2008. A five-member team of consultants traveled to Ghana and conducted interviews across the agricultural sector, including with state and local officials, farmers and FBOs, owners of agriculture enterprises, business associations, non-government organizations (NGOs), the banking and lending community, and many others. Interviews and observations took place in and near Accra, Kumasi, and Tamale. The AgCLIR diagnostic culminated in a roundtable presentation and discussion on September 4, 2008, which was attended by 45 stakeholders in Ghana’s agricultural sector, as well as several donors. At the roundtable, team members introduced their preliminary observations, which were then subjected to feedback and elaboration from the participants. This input helped shape the final conclusions of the team, which are found in this report.

Each chapter of this report is structured the same way. Following an introduction, each has four substantive sections, which are themselves followed by recommendations.

LEGAL FRAMEWORK.

The chapters first examine Ghana’s laws and regulations that serve as the structural basis for the country’s ability to achieve and sustain market-based development in the agricultural sector. They discuss the following questions: How accessible is the law, not only to elite, well-informed groups, but also to less-sophisticated actors, rural constituencies, or foreign investors? How clear are the laws, and how closely do existing laws reflect emerging global standards? How well do they respond to commercial realities faced by stakeholders in the agricultural sector? What inconsistencies or gaps are

“Agriculture is no longer a brute-force industry. It is a knowledge-based activity.”

6 World Bank, *Doing Business 2009* (2008).

7 World Bank, *Doing Business 2008* (2007).

8 Id., available at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:21513382~pagePK:64257043~piPK:437376~theSitePK:4607,00.html>.

9 Id.

10 Id.

present in the legal framework? This section examines both laws and regulations that apply throughout the economy and additional laws and regulations underpinning the agricultural sector specifically.

IMPLEMENTING INSTITUTIONS.

Next, the chapters examine those institutions that hold primary responsibility for implementation and enforcement of the legal framework. These institutions include government ministries, authorities, and registries, or, in certain cases, private institutions such as banks and credit bureaus. In addition, courts are examined with respect to their effectiveness in addressing disputes that arise in the agricultural sector. Again, the indicators seek to uncover how these implementing institutions function not merely with respect to mainstream business interests in the capital, but also in rural areas and agriculture-based communities.

SUPPORTING INSTITUTIONS.

The chapters then look closely at those organizations, individuals, or activities without which the agricultural sector in Ghana cannot be fully developed. Examples include FBOs, rural banks, professional associations, agriculture and law faculties, the media, and donors. The relative awareness of law and practice on the part of each institution is examined, along with the specific ways in which institutions increase public and professional awareness, work to improve the economic performance, and otherwise serve their constituencies.

SOCIAL DYNAMICS.

As the final point of analysis, the chapters discuss key issues that impact the environment for growth in the agricultural sector. Roadblocks to reform, in particular, are considered, including those entities that may be undermining change. This discussion also identifies significant opportunities for bolstering the environment for agricultural enterprise—such as champions of reform or regional initiatives—as well as matters of access to opportunity and formal institutions. Social dynamics also concern such important matters of gender, human capacity, and public health, each of which may have a significant bearing on how the business environment truly functions. Indeed, often a full understanding of legal and institutional issues cannot be achieved without a nuanced consideration of a country's social dynamics.

RECOMMENDATIONS.

Following this four-part analysis, each chapter sets forth a set of recommendations. These recommendations are drawn from the key findings in each chapter and reflect current

reform capacities, opportunities, and evidence of will to reform. Some of the recommendations within the chapters may overlap—that is, some may be consolidated into a single reform initiative covering two or more topics—and all turn on the priorities and preferences as enunciated by the Ghanaian government itself. The recommendations in this report are intended to serve, among other functions, as a threshold list for donor coordination of immediate initiatives and preparation of scopes of work.

With respect to each area of inquiry, this diagnostic uses a process of reviewing and scoring **key indicators** to develop a thorough analysis. Once as much relevant information as possible is gathered—from written sources, meetings and interviews, and consultation among colleagues—each of the key indicators was scored, based on the assessor's best estimate of the issue at hand. To help an assessor determine a score, between 3 and 15 **supporting questions** accompanied each key indicator. These questions themselves are not scored, but are intended to guide the assessor toward a consistent, fact-based judgment from which the key indicator score is then derived.

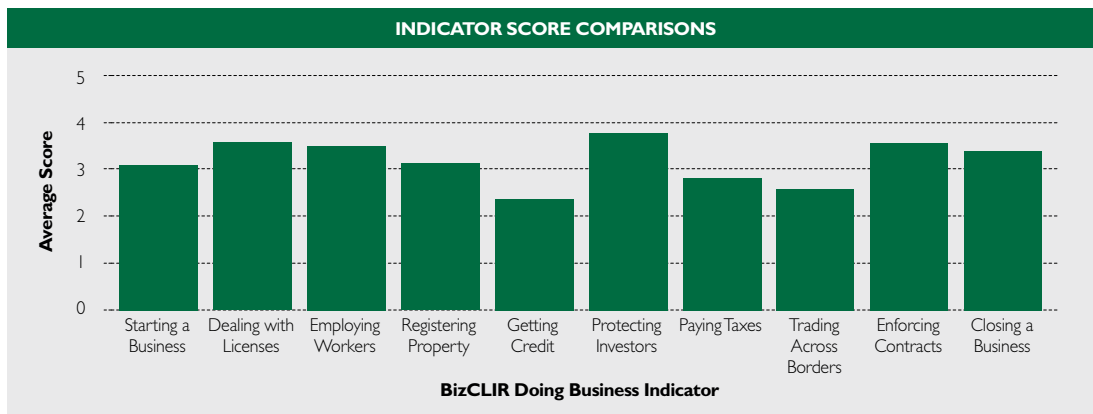
THE SCORE AWARDED KEY INDICATORS ALIGNS WITH THE FOLLOWING CONCLUSIONS:

- 1 = strong negative
- 2 = moderate negative
- 3 = neutral (or having some negative and some positive qualities)
- 4 = moderate positive
- 5 = strong positive

The scores are not intended to serve as a stand-alone, number-based pronouncement on the state of affairs in Ghana. Rather, they should be read in conjunction with this report's narrative as a means of understanding the status of certain key indicators of a healthy legal and institutional environment for agricultural enterprise and identifying priorities for reform.

SUMMARY OF SUBJECT-SPECIFIC FINDINGS

The findings of the 10 subject-matter areas examined in this diagnostic are summarized below. In general, the areas that scored highest in the AgCLIR diagnostic—those with the most positive findings—are Protecting Investors and Enforcing Contracts. The weakest scores—indicating more negative circumstances than positive—emerge from the areas of Getting Credit and Trading Across Borders. Beyond these trends, the general findings are as follows:



STARTING A BUSINESS.

Despite its preeminent role in the overall economy, production agriculture is still viewed more as a lifestyle than a business in Ghana, and most of it remains firmly situated in the informal sector of the national economy. This is due to many factors, including low literacy rates among the farming population; a lack of business training at all levels of Ghanaian education; small scales of operation; the unpredictable income flows that are a natural consequence of rain-fed cultivation; a lack of effectiveness among initiatives to organize farmers into more competitive organizational structures; and the paucity of innovations in productivity and processing that could make agricultural production a sustainably profitable enterprise. In recent years, Ghana has demonstrated some marked administrative improvements in the conditions for starting a business, including through strengthened procedures at the Office of the Registrar General. But there remain key weaknesses in areas of substantive, business, and knowledge-oriented support to agriculture production that discourage rapid entry into the formal sector. These include issues of access to seed, fertilizer, and irrigation, as well as of market information and the way in which enterprises get their products to market. The heavy presence of donor activities and NGOs in Ghana's agricultural sector also carries some negative implications that warrant consideration and reform.

DEALING WITH LICENSES.

Ghana's licensing environment for the agricultural sector is in flux, with considerable optimism that legal and institutional reforms in the near term will contribute to greater productivity down the road. At the time of this diagnostic, regulations concerning pre-release testing of seeds and planting materials, which Ghana's research institutes must follow, typically duplicated demonstration trials that have already been completed elsewhere in the

Tropics, and occasionally within the West African region itself. With the advent of a new seed law—under consideration in Parliament as early as November 2008—the market constraints that result from this bottleneck may change, but only if there is a meaningful plan for implementation. In the case of fertilizer, the regulatory chain of command is confusing. There is a draft law on fertilizer that was also expected to be submitted for ratification in October 2008. In the meantime, the Ministry of Food and Agriculture (MoFA) continues to license the import and distribution of fertilizers on the basis of an administrative decree. In the case of pesticides and other crop protection products (CPP), the Environmental Protection Agency is vested with responsibility for registration of such products, and for licensing importers, distributors, and commercial applicators. Registrations of new brands of CPP—even products with the same active ingredients and with similar formulations to those that have already been registered and approved for distribution within the country—must be preceded by toxicology and bio-efficacy testing. Registration typically requires three years, although longer timelines are not infrequent.

EMPLOYING WORKERS.

The high degree of informality in Ghana's economy complicates the task of assessing the influence of agricultural enterprise on the economy as a whole and on employment issues in particular. In rural areas, informal employment is well over 90%. Ghana's agricultural sector produces an average income far below that found in the other sectors. While reduction in poverty in Ghana over the past generation has been remarkable (51.7% in 1991–1992 to 28.5% as of 2005–2006), improved living conditions are not uniform by sector or by geographic region. As of 2005–2006, while the poverty rate everywhere else in Ghana had

Agricultural productivity is measured as the ratio of agricultural inputs—beginning with land and labor—to agricultural outputs. Although individual products are usually measured by weight, their varying densities make measuring overall agricultural output difficult. Therefore, output is usually measured as the market value of final output (which may exclude intermediate products such as corn feed used in the poultry industry.) Agricultural productivity may also be measured by what is termed “total factor productivity,” which calculates agricultural productivity based on an index of agricultural inputs (including land, labor, seed, fertilizer, and other inputs) as compared to an index of outputs. As reported by individuals across the value chain over the course of this diagnostic, productivity of Ghanaian farms is unacceptably low at this time, both for basic food crops and for crops intended for export.

The productivity of a country’s farms is important for many reasons. Increases in productivity can help alleviate poverty in countries such as Ghana, where agriculture employs the greatest portion of the population. As farms increase their outputs, the wages earned by those who work on them typically increase. At the same time, food prices decrease and food supplies become more stable.

Aside from providing more food, increased farm productivity affects a country’s overall prospects for growth and competitiveness on the agricultural market, income distribution and savings, and labor migration. As a country’s farms become more productive, its relative advantage in agricultural products increases, which means that it can produce these products at a lower cost than that of other countries. Therefore, the country becomes more competitive on the world market, which means that it can attract more consumers since they are able to buy more of the products offered for the same amount of money. More productive farms are also better candidates for credit and investment.

There is not a single remedy to low productivity. Rather, productivity must be tackled on a variety of fronts. As discussed in this report’s chapter on Dealing with Licenses, productivity is influenced by timely access to good seed, fertilizer, and pesticide, as well as to the knowledge of how to use these inputs properly. As detailed in the discussions on Employing Workers and Protecting Investors, better productivity also emerges from strengthened economies of scale, which can take place through more effective use of the FBOs model. Moreover, productivity gains must be supported by low rates of post-harvest loss, which require resources described in this report’s chapter on Getting Credit and infrastructure improvements called for in the chapter on Protecting Investors.

dropped to 20%, the poverty rate in the Northern Zone was 62.7%. This diagnostic found that the most prominent opportunities to reduce poverty among agriculture workers, and indeed to capture their work as a vehicle toward economic growth, include (1) improvements to the capacities of FBOs; and (2) greatly strengthened extension services to farmers. A strengthened understanding of Ghana’s widespread system of sharecropping is also necessary, so individuals who labor under such a system have clarified and strengthened access to their rights under Ghanaian labor and contract law.

REGISTERING PROPERTY.

It is widely understood that the fundamental problem with land tenure in Ghana is that it straddles two vastly different pillars of law and practice. On the one hand, there is the statutory regime of the government of Ghana, codified in the Constitution of 1992 and supported by an extensive body of law and regulation dealing with the ownership and use of land. On the other

hand, there is a complex customary regime governing the assignment of tribal lands based on centuries of oral tradition and practice, varying within Ghana by location, between different chiefdoms, and by systems of lineal succession. Ghana lacks consensus about how to address this state of affairs. Nonetheless, while land tenure issues constitute a disincentive to orderly development, and are vulnerable to commerce-slowng challenges in both the judicial and customary settings, this diagnostic found that the risks associated with land insecurity are generally considered to be manageable by the companies and farmers that confront them.

GETTING CREDIT.

Despite contributing to an enormous share of GDP, Ghana’s agricultural sector receives a relative paucity of the nation’s credit. Notwithstanding a generally sound legal framework, Ghana’s financial institutions are averse to lending to agriculture for many reasons. First, creation of collateral is expensive, is cumbersome, and does not

encompass instruments to cover transactions of primary economic importance. Second, the ability to secure collateral is uncertain because the claims against security interests of lenders and creditors or sellers are difficult to rank. Third, enforcement of credit contracts can hinder rather than facilitate foreclosure or repossession. In addition, Ghana's financial markets are highly fragmented and exhibit the following characteristics: (1) borrowers and lenders cannot carry out efficient transactions; (2) lenders cannot protect themselves against local credit risks by easily diversifying their loans; (3) capital savings and investment do not readily balance between surplus and deficit regions; and (4) the cost of capital to equally creditworthy borrowers is not approximately the same everywhere.

PROTECTING INVESTORS.

Promising news in Ghana's economy tends to mask volatile investment conditions in the agricultural sector. At the grassroots level, confusion and inconsistency pertaining to the formation and activities of FBOs mean that this model does not come close to meeting its considerable potential as a vehicle for agricultural investment. Other systems to support investment in agricultural enterprises are immature and even somewhat neglected by the country's major implementing and supporting institutions. While larger or especially ambitious companies may seek capital by offering shares to the public through the successful Ghana Stock Exchange, this is not a realistic prospect for most agriculture enterprises. Although the risks inherent in agriculture can hardly be eliminated entirely, there are many policy options available that can strengthen the investment environment.

PAYING TAXES.

It is generally agreed that agricultural taxes in Ghana are not prohibitive and most producers can readily minimize the taxes that they pay. However, tax collection is weak, not just for agriculture but in all sectors. There are too few Internal Revenue Service (IRS) tax centers in the country. Moreover, Ghana's tax system is said to be subject to patronage so that certain interests are not touched by the tax system. IRS processes and documentation are seen to be cumbersome and slow, but ultimately functional.

TRADING ACROSS BORDERS.

Ghana has made substantial progress in recent years toward creating an environment conducive to domestic and international trade in agricultural products. Macroeconomic stability is markedly improved from ten years ago: inflation is at 10% down from 30% in 1998;

the fiscal and external deficits have improved; and the debt burden was brought to a more manageable level. The freely convertible cedi is now competitive among a basket of currencies based on a managed float. In addition to the increasingly stable macroeconomic environment, the trade regime is relatively liberal. Ghana's government has removed import and export prohibitions; eliminated wasteful subsidies; and reduced the number of tariff bands to four (0%, 5%, 10%, and 20%), with agricultural imports facing the highest average tariffs at 15.6%. Notwithstanding these important reforms, fundamental constraints to Ghanaian food security and the competitiveness of Ghana's agricultural enterprises through trade remain. These include limited access to land, water, skilled labor, appropriate finance, markets, electricity, and infrastructure, each undercutting a productive agricultural sector.

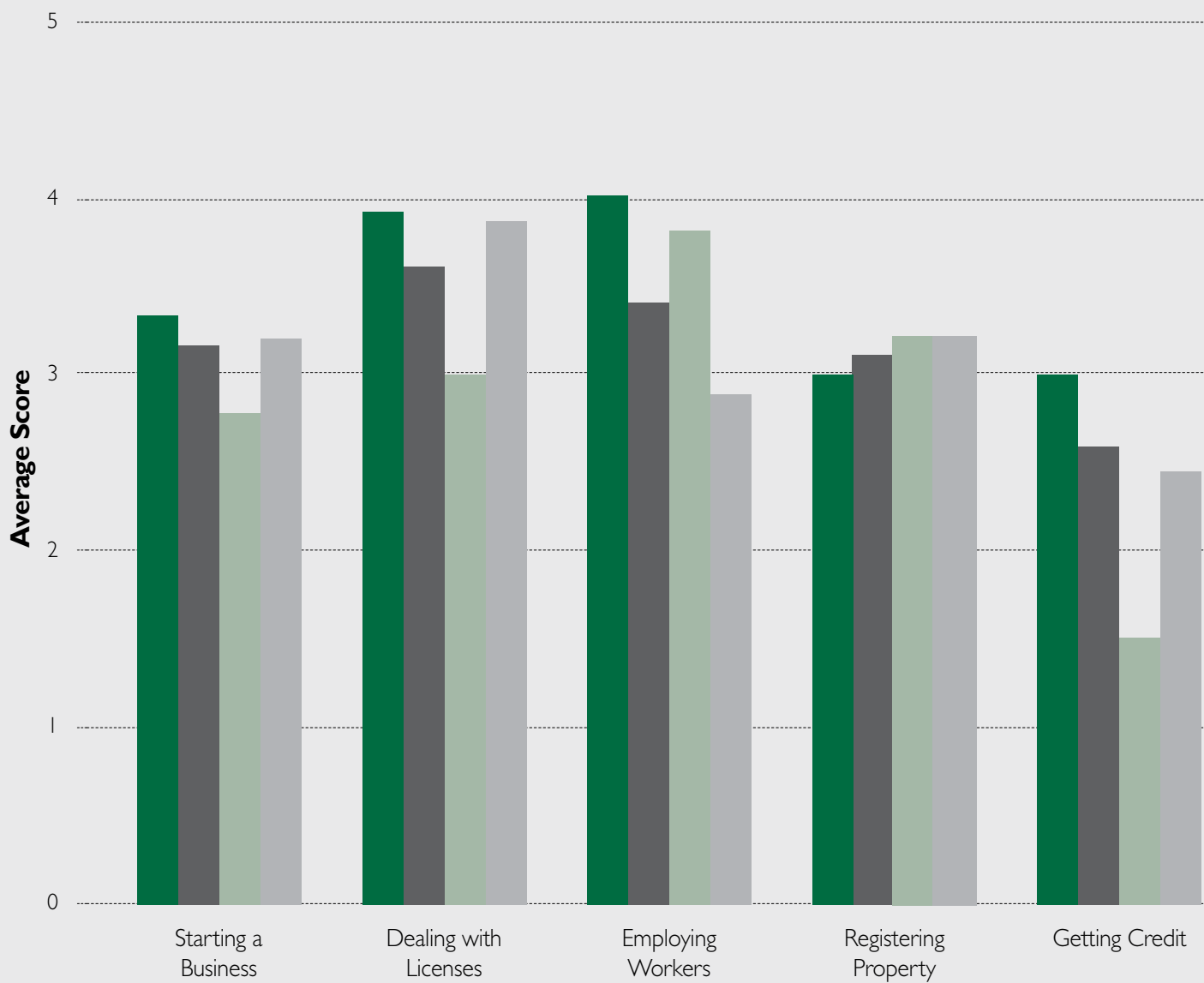
ENFORCING CONTRACTS.

Ghana exhibits far sounder conditions for the enforcement of contracts, including those that concern agricultural investments, than most countries previously examined by BizCLIR. Factors contributing to an increasingly positive environment for commercial dispute resolution include a new Commercial Court, as well as "fast-track" high courts; the growth of alternative dispute resolution (ADR) mechanisms, including both arbitration and mediation; a well-established community of valuation and accounting professionals; a generally functioning system of bailiffs; and a growing sense that corruption in public institutions, including courts, will no longer be tolerated. Yet small farmers and FBOs remain unaccustomed to honoring, and even often unwilling to honor, written contracts for the purchase of agriculture products, thus increasing the risk of doing business in the sector. There is also a perception among lenders that small players are rarely held accountable by courts for their flouting of contracts, thereby rendering lenders and other institutions unwilling to do business with them. For an economy that depends so heavily on agriculture, there is a shortage of legal professionals who are properly trained to deal with issues that are prevalent in that sector: Law schools and institutions of continuing legal education, as well as other professional institutions, should work to integrate agriculture-specific issues into their curricula.

CLOSING A BUSINESS.

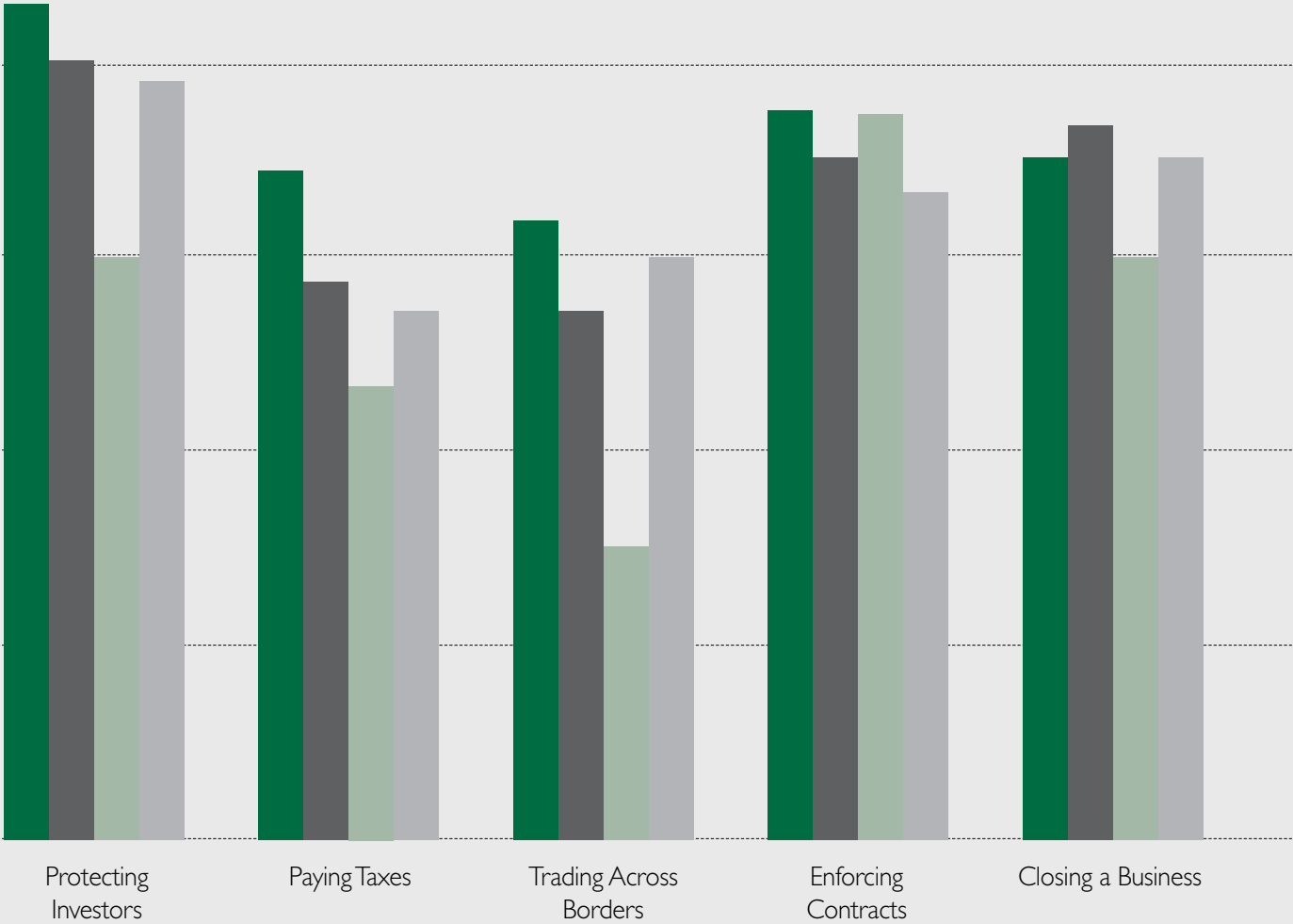
In 2006, a new Insolvency Act replaced Ghana's previous law for insolvency, dating from 1962. Lawyers and bankers generally view the new law as an improvement over its predecessor because it clarifies and

INDICATOR SCORE COMPARISONS



BizCLIR Doing Business Indicator

- Legal Framework
- Implementing Institutions
- Supporting Institutions
- Social Dynamics



“There is nothing I can do in South Africa or Europe that I cannot do here in Ghana.”

streamlines the conditions under which companies that cannot pay their debts may enter into bankruptcy. It also introduces for the first time a meaningful approach to rehabilitation of insolvent firms. The Insolvency Act is not yet especially relevant or useful, however, to the communities that need it most—that is, the growing arena of registered enterprises and their stakeholders, including investors, creditors, and employees. The statute generally disregards special concerns of agriculture interests, such as specific needs arising from the perishable nature of agricultural products. Lawyers, judges, and other professionals need more training and information about the practical implications of implementing the new Insolvency Law.

CROSSCUTTING THEMES

This diagnostic is organized so that 10 components of a healthy and prosperous environment for agricultural enterprise are considered discretely and in relation to each other where appropriate. Certain issues and dynamics are so prevalent across this analytical framework that they warrant special mention. These crosscutting themes include the following:

1. Abundant opportunities in agriculture
2. A non-supportive financial system
3. Insecure land rights
4. Problems with market access: ignorance, information, and infrastructure
5. Obstacles to innovation

These issues are discussed in turn.

I. ABUNDANT OPPORTUNITIES IN AGRICULTURE

As expressed by one industrial farmer in Tamale, “There is nothing I can do in South Africa or Europe that I cannot do here in Ghana.” Indeed, throughout the diagnostic process, a long list of key advantages or particular opportunities in Ghana unfolded. Beginning with the country’s “perfect climate,” “good soil,” and “unique [geographic] position in the world,” agriculture is a pursuit that, even as Ghanaian society modernizes, will be fundamental both to the domestic economy and world food supply. Specific opportunities and reforms identified during this diagnostic include the following:

Continued perceptions of Ghana as a regional leader in doing business. Ghana is a much friendlier and more competent environment for doing business than most of its neighbors. In its most recent *Doing Business* report, issued in September 2008, the World

Bank ranks Ghana as the best country for doing business in West Africa—by far—and the sixth highest-ranked country in sub-Saharan Africa (behind Mauritius, South Africa, Botswana, Namibia, and Kenya).¹¹ Ghana’s conscientious economic stewardship has led to tangible results: Ghana has roughly twice the per-capita output of the poorest countries in West Africa.

Growing perceptions of Ghana as a transparent business environment. In Transparency International’s most recent *Corruption Perceptions Index*,¹² also issued in September 2008, Ghana ranks in the top half of countries surveyed, which is good by regional standards. This diagnostic confirmed that there is increasing confidence among users of government services that state actors will not use their positions to solicit bribes. For example, a private practitioner in the land registration community stated unequivocally that, while bribes of state workers were a consistent condition of doing business as recently as two or three years ago, this is significantly less of the case today. In 2007, an independent report on corruption in the judiciary was greeted with a public commitment on the part of judicial leadership to tackle the problem. Petty corruption remains a problem in Ghana’s public agencies—more so, it appears, in rural areas, where there is less scrutiny and graft habits are more entrenched—but there is nonetheless considerable positive news on this front.

Improved access to the formal sector. In 2008, conditions for agriculture enterprises to enter the formal sector—thereby seizing the many advantages of business formality—improved dramatically. Through improved use of technology and strengthened business practices, the Registrar General (RG) now operates walk-in business registration centers that have reduced the business registration process to five days, in addition to a three-day name-registration process. Two business registration offices currently operate—one in Accra and the other in Komesa—and a third is scheduled to open in Tamale. Individuals can also get registration forms at any post office and submit them to the RG by mail. The registration offices prominently post fees, timelines, and specific announcements that discourage customers from attempting to bribe office employees in exchange for faster service.

Strengthened frontline services for business-oriented government services. Regular users of other state agencies credit several of them with improving their interface with the public. Those agencies

¹¹ World Bank, *Doing Business 2009* (2008).

¹² Transparency International, *Corruption Perception Index* (2008).

cited for business-oriented service to the public include the Ghana Investment Promotion Centre (GIPC), the Land Title Registry, and the Commercial Court and the fast-track high courts. These agencies are also widely observed to have diminished their tolerance for informal fees and increased their emphasis on transparent and genuinely helpful customer service, thereby building confidence in public institutions.

Increasingly productive integration of the family farm model. Unlike some of its neighbors and other agriculture-oriented economies, Ghana's agricultural sector is substantially based on the small-farm model. The state of land ownership and customary land use rights is such that the small family farm will continue to be the norm for the foreseeable future. But this model comes with certain opportunities that may strengthen the country's attractiveness as a destination for investment. For example, a nucleus farm model, discussed in this report's chapters on Protecting Investors and Getting Credit, increasingly allows for strengthened quality and productivity of products among like groups of farmers. Also, the continued existence of family farms in Ghana presents a marketing opportunity for certain exports, whether for accessing fair trade markets or for underscoring the quality of small-farm-grown cocoa beans and shea nuts. As many observers pointed out in the course of this diagnostic, "bigger" in agriculture is not necessarily "better," and this is a message that can be drawn upon when marketing the country's agriculture exports. One key point is that the "food miles" that are incurred when a Ghanaian product is shipped to, say, the European Union may be offset by evidence that the carbon footprint of Ghanaian produce is lower than many crops grown in Europe.¹³

Throughout this report, many other opportunities in Ghana's agricultural sector are noted, including areas where current reform initiatives promise better conditions in the future. Nonetheless, certain major, crosscutting constraints remain, as discussed below.

2. A NON-SUPPORTING FINANCIAL SYSTEM

Poverty in Ghana has diminished in recent years—from 39.5% in 1998–99 to 26.8% in 2005–2006¹⁴—but living conditions in the rural areas remain very modest. Most farmers subsist on crops that use poor seed, inappropriate fertilizers, and unproductive watering techniques. They also lose their crops to post-harvest conditions at an alarming rate—up to 30% in the maize sector, for example.¹⁵ These conditions are, not insignificantly,

attributable the very poor access farmers in Ghana have to credit and to capital. Among the core problems pertaining to the financial system as it relates to agriculture are the following:

Perilously low lending to the agricultural sector.

Although a definitive figure is elusive, it seems that considerably less than 10% of lending in Ghana is directed toward agriculture, with most of that lending directed at the country's relatively few large commercial farms and processing enterprises.¹⁶ The top limiting factor to the growth of agricultural enterprise (of all sizes) is a lack of investment capital and poor access to agriculture finance or lines of credit for working capital. T-bill returns are so high that many banks are discouraged from lending; they can achieve satisfactory returns without the risk of borrower default or the high transaction costs involved in agriculture lending. Interest rates are correspondingly high, with the current rate for farmers approaching 30% with terms of not more than one year.

Absence of a law specific to secured transactions.

The absence of a modern law allowing banks to secure movable property as loan collateral in a simple, accessible public registry deters quick, inexpensive, and simple creation of a proprietary security right. There is no law or widely shared system that specifically addresses secured transactions, either traditional or non-traditional. The key banking laws are silent on both "secured transactions" and on "collateral" more generally. Lenders must set their own ground rules on their use of secured transactions, from the information that they will require to the types of transaction they will support. Thus, both borrowers and lenders face a lack of consistency, predictability, and enforceability of their loans.

Lack of orientation toward agriculture issues within the professional community.

A recurring theme with respect to many professions—law, banking, accounting, and so forth—is that practitioners who could facilitate a stronger lending environment for agribusinesses lack sufficient knowledge of the sector to do business with these agriculture-related firms. Thus, perceived risks are often cited as reason for not going forward with loans, investments, or enterprise growth plans, even though, as one agriculture economist said, "Risks of agriculture can be over-exaggerated" and, particularly among people who understand the sector, "they can be managed and minimized." Law schools teach very few courses that speak directly to concerns of the agricultural sector. Bankers rarely are specially

13 Susie Emmet, *Miles Better?*, 41 DFID/Developments (April 2008), at 12–13.

14 Africa Development Bank/Organization for Security and Cooperation in Europe, *African Economic Outlook* (2008), at 342.

15 See USAID/Ghana-Trade and Investment Program for a Competitive Export Economy, *Analysis of Agriculture Value Chain Financing Options* (March 2008), at 28.

16 This figure derives from informal estimates provided by lenders during the course of this diagnostic; Bank of Ghana estimates; and unpublished donor estimates.

trained in special products or risk-minimizing tools pertaining to agriculture.

Inadequate sense of community responsibility on the part of banks. At the roundtable discussion held at the conclusion of this diagnostic, an informal group of agriculture, lending, and donor professionals noted that Ghana's lending community tends to operate with a sense of entitlement toward their constituent communities, rather than as good corporate citizens committed to making the economy grow. This observation was illustrated by the persistent point that banks choose to purchase safe and relatively high-yield T-bills, rather than return their depositors' money into the economy. The fact that the standard 25–30% lending rate has little relation to what banks pay to borrow money is also an unhelpful, non-growth-oriented corporate practice. With respect specifically to agriculture, banks and other lenders are perceived as not wanting to engage in the careful supervision and close monitoring that are often necessary as part of agricultural loans, preferring instead to lend to “easier” groups, such as the construction or retail trade sectors.

There are several other factors that contribute to Ghana's inadequate financial environment for agriculture. They are discussed at various points in this report.

3. INSECURE LAND RIGHTS

In 2007, Ghana made a dramatic jump in the World Bank's *Doing Business* rankings in the category of Registering Property—from 113 to 26, the “biggest reformer” in this category among the 171 countries surveyed.¹⁷ During this diagnostic, users of Ghana's Land Title Registry expressed admiration for the agency's dedication to change, from its clearly mapped processes for action, to its significant reduction in “informal fees,” to its marked improvement in processing times. Directives “from the top” that Ghana's various land agencies must stop working in ways that ignore the mandate of other relevant government entities and start following the very clear mandate of the Land Title Registration Law of 1986 resulted in increased confidence in state oversight of land.¹⁸

Notwithstanding these important administrative reforms, Ghana's recent land initiatives did not scratch the surface of the underlying reality that precludes secure land rights in Ghana: the fact that 80% of the country's land is held by tribal authorities, and those authorities hold significant and relatively unchecked discretion over how that land is managed and used.

For the most part, tribes lease lands to their users. The formal procedures for undertaking a lease are typically unwritten and somewhat opaque, although they do appear to follow similar paths, regardless of the region or tribal affiliation. Namely, a party seeking rights to use land identifies the general area in which he or she wishes to locate. That party then identifies the tribe that holds title to that area, and enters into negotiations with its king or paramount chief. Lease rates are controlled and collected by the Lands Commission, and tribes receive about 40% of the total proceeds from these land rents. In response to this statutory stipulation, a separate customary vehicle has evolved by which the king or paramount chief, acting on behalf of his people, collects payments for the lease concession that more closely reflect the value of the property being assigned. This payment is ex-contract, and is not recorded in any of the written records of the lease concession, so as to avoid any unwelcome scrutiny from the Land Commission or the federal tax authorities.

It is not that Ghana's tribes do not operate with the best interests of their constituents in mind—they can cite vast examples of how they do. Moreover, farmers and other enterprises that have become accustomed to dealing with tribal institutions are not wholly dissatisfied with the relationships—they generally understand the process they need to go through to lease more land and can do so with relative efficiency. Some major investments in various agriculture projects have been able to go forward in recent years, notwithstanding this state of affairs.

That said, there is without question a lack of transparency and consistency with respect to such issues as rents, fees, land use rights, and conditions for termination of use of tribal land. This makes long-term planning difficult for agricultural enterprises and serves as a disincentive to invest. In other words, while many constituencies have come to be able to function within the familiar constraints, there is high awareness in Ghana that outsiders may refrain from working in Ghana as a result of its opaque system of land tenure and land use. So long as land tenure is steeped in opacity and a lack of predictability, investment in agriculture is undermined.

At the roundtable discussion held at the conclusion of this diagnostic, an informal group of land professionals concluded that land issues in Ghana will be resolved by nothing less than an act of Parliament that calls for a high-level commission to address Ghana's long-term vision for its own land. Indeed, Ghana's land quandary is grounded in its constitutional commitment to honoring

17 World Bank, *Doing Business 2008* (2007).

18 See Cemile Hacibeayoglu, *When Enough is Enough (Case Study: Ghana), Celebrating Reform* (World Bank 2008).

its tribal roots and cultural history. This is an issue that can benefit from donor support in the long term, but only *after* a home-grown agenda based on widespread consensus is permitted to evolve.

4. PROBLEMS WITH MARKET ACCESS: IGNORANCE, INFORMATION, INFRASTRUCTURE

Throughout this diagnostic, a range of stakeholders stated that Ghana's agriculture products, both for domestic consumption and for export, have an unusually difficult time finding their way to market. There are many aspects of this problem, ranging from those that lend themselves to better farmer organization and use of information, to those requiring major and costly fixes to the nation's infrastructure. Examples are set forth below.

Ignorance. The problem of accessing markets begins with the very low level of knowledge held by the majority of Ghana's farmers. Weak literacy and quantitative skills, as well as the day-to-day challenges of subsistence farming, mean that there is very little long-range planning on small farms. Many farmers do not track the costs of their inputs and the value of their outputs.

FBOs similarly are underinformed and not terribly ambitious with respect to promoting economies of scale or seeking new markets. Seed cooperatives, for example, seem content to sell their certified product to markets consisting mainly of donors and NGOs, rather than to develop initiatives that would persuade other farmers to purchase and use more productive seed. Poultry cooperatives similarly do not pursue domestic markets in an effective way, emphasizing instead their policy preference for raising tariffs. To date, FBOs have generally failed to embrace their potential as a vehicle for credit and investment in the agricultural sector, and donor efforts to support FBOs have proven remarkably thin in their effectiveness.

There is also a lack of banking experience which ultimately deprives farmers of access to markets. Lenders report that farmers "don't know how to be good borrowers" and their experience has largely been of government loan forgiveness. Further, farmers reportedly do not know how to work effectively as investment partners. Thus, the challenge that rural banking faces is to get farmers to understand how credit works.

The issue of "ignorance"—or, expressed otherwise, a lack of market understanding among constituencies who need it—includes not only poor and uneducated

farmers, but also the professional classes that are in a position to serve them. As described at various points in this report, there is surprisingly little expertise in the legal and banking fields directed toward agriculture, given the significance of the sector to Ghana's economy. Again, risks that could be alleviated by knowledgeable people are instead cited by the same people as reasons to do business in other sectors entirely.

Information. Market information is inadequate across almost all agricultural value chains in Ghana. Traders and potential buyers of agricultural products report that price information is hard to find, incomplete, and rarely timely enough to affect buying decisions.

For example, this diagnostic observed very little timely dissemination of global and regional commodity prices in Ghana. Other market information also proved generally unavailable to the enterprises that need it, including supply and demand estimates, quality preferences and information, raw material prices, supply trends, or even the average crop yields attained in other countries. Also, formal coordinating mechanisms for buyers and sellers of agricultural products do not exist beyond regular "market days."

In Ghana, most information about market opportunities is informal and comes through existing networks, a situation that is unlikely to bolster market expansion or market-based innovation. There are several agencies, associations, and donor groups in Ghana with a role to play in relieving problems of information, but their performance has not yet provided a clear vision to farmers and FBOs of price points across and outside of Ghana to serve as a basis for informed price-optimization strategies. One especially bright light is TradeNet, a private venture that acts as a platform for buying and selling agricultural products over cell phones and the Internet. The company has developed a system that uses the power of mobile networks to facilitate the flow of market information. This provides useful information mainly for traders and is not widely accessible by farmers. TradeNet is still a nascent organization, however; though it shows considerable promise for the future.

Infrastructure. Farmers and other agriculture enterprises in Ghana have an unusually difficult time physically moving their products to market. As of 2006, only 45% of all roads in Ghana were considered to be in good condition, according to the Ministry of Roads and Transport. Ghana has no road transport policy and only three public weigh stations. Further, there is too little warehouse space and the ports lack sufficient scanning

“Risks of agriculture can be over-exaggerated... they can be managed and minimized.”

equipment. Ghana's seaports are considered high-cost facilities because of their "limited physical capacity, high tariff rates and congestion."¹⁹

Thus, coordinating supply chains in Ghana is difficult due to extensive road delays, delays at the ports, and delays in customs. Poor coordination of supply chains has resulted in what some sources called "unnecessary gluts"—for example, imported grain has arrived too late to alleviate specific shortages that they were intended to help and has produced an effect opposite from that which was intended by the initial shipment. Namely, because of a lack of warehouse options, these new supplies tend to drive down the price of product on the open market.

Demand for electrical power in Ghana has been growing at 14% annually, far outstripping growth in total supply. The Electricity Company of Ghana loses 4% of its domestic energy production through transmission losses, and 24% more as a result of obsolete equipment in its distribution system.²⁰ At the same time, there is a lack of reliable and affordable energy for the agricultural economy. In one case, the unreliability of the electrical grid required a packing operation to resort to free-standing generators to run the plant. In this instance, costs associated with generator operations amounted to 60% of total operating costs for the plant.

Long-term growth in Ghana's agricultural sector will only be achieved through a sustained commitment to bolstering the country's infrastructure, including through better roads, warehouse space, access to electricity, and other fundamental resources for doing business.

5. OBSTACLES TO INNOVATION

Finally, it was observed throughout this diagnostic that certain conditions exist that discourage agriculture entrepreneurship generally. These conditions vary significantly, but collectively contribute to a sector that is far less productive than it should be. The following examples show that innovation is subtly but powerfully discouraged in Ghana's agricultural sector:

Seed constraints. With regard to planting materials, any seed proposed for distribution within Ghana—regardless of productivity and suitability findings in similar agronomic areas elsewhere—must undergo three years of agronomic trials, along with one year of on-station research to confirm yields and consumer acceptability, before submittal to the National Varietal Release Committee. All told, the timeline from original request to final release can easily extend to eight years.

For a country like Ghana, where low yields derived from unimproved planting materials represent an overwhelming constraint to improving food availability and farmer incomes, this protracted pre-introduction process represents a truly stifling barrier to innovation. This fact may change with the advent of a new seed law (see this report's chapter on Dealing with Licenses), but implementation of the new law will need to focus on on this issue in for it to be effective.

Customary systems and the business environ-

ment. Ghana has, on the one hand, a relatively sophisticated legal environment with a long tradition based on the British common law. On the other hand, it has an even longer tradition of resolving disputes through tribe-based mechanisms or other customary methods. As discussed earlier, the entrenchment of land in customary systems has critical implications for Ghana's economic position. It is hard, according to one observer, "to marry the formal system with the informal... We are forcing people to become formalized without understanding what happens" when traditional systems are displaced without acknowledgement of the role they played in the system. That said, there appears to be a consensus that the customary systems—with their duplicative institutions and lack of transparency in certain respects—do not themselves contribute to a strong environment for doing business, particularly as compared to other emerging markets.

Donor dependence and fatigue. Deep into Ghana's rural areas, there is a heavy presence of multilateral and bilateral donor-sponsored organizations that underwrite a wide variety of assistance programs for stakeholders in the agricultural sector, including farmers, FBOs, and small and mid-sized agriculture enterprises.

On the one hand, Ghana's agricultural sector has been strengthened by these outside interventions, including contributions to or support of investments, over the years. On the other hand, there is the problem of a donor-induced "short-term mentality." For example, it takes 5 to 7 years for most tree crops to reach full production. It can be 10 years before a country has established itself in its destination markets as a reliable supplier of a given set of agricultural commodities. Establishment of an agroprocessing complex can take 3 to 5 years before it can launch operations, and much longer before it can achieve a profitable and sustainable level of activity.

Such examples lead to several considerations. Most donor projects tend to run for three to five years, after

19 International Finance Corporation, *Ghana International Competitiveness: Opportunities and Challenges Facing Non-Traditional Exports* (2001).

20 Institute of Statistical, Social and Economic Research, *The State of the Ghanaian Economy in 2006*, at 151–55.

which they close down and new projects take their place. This creates a tendency for local growers and FBOs, as well as state and local institutions, to focus on short-term projects with immediate results, rather than on the long-term sustainable projects that can have much broader and more durable impact on the sector.

In addition, state institutions often surrender their responsibility for providing support and services to the agricultural sector: In Ghana, many believe that the government has transferred control over management of the agricultural sector away from government institutions and into the hands of donors and NGOs. The government is seen as performing well in the development of policy, but poorly in terms of implementation, due to a shortage of staff and skills, as well as excessive reliance on NGOs to get the job done.

Moreover, there is a tendency by farmers to “farm projects” rather than land. If new funds can reliably be expected to come along every three to five years, each one based on a new agricultural direction, there is an understandable tendency on the part of farmers and FBOs to split their attention between maximizing earnings from their land and maximizing income from grants and program support. All too often, this dual-track strategy leads to conflict, which in turn leads to de-emphasis of the production dimension in favor of the donor dimension.

Widespread aversion toward risk and investment. Finally, a major obstacle toward innovation in the agricultural sector is what was reported over the course of this diagnostic as a general aversion toward risk, exacerbated by certain cultural norms. The recent case of an international fruit company exploring possible investment in Ghana’s banana sector is illustrative of the types of opportunities that can “slip away” when confronted by local investor aversion or indifference.²¹ In 2007, one of the world’s largest integrated fruit and vegetable companies sent a team to Ghana as part of its efforts to diversify its Latin American banana sourcing and to gain a participation in the preferential access that Africa-Caribbean-Pacific (ACP) countries enjoy in the EU banana market. The company’s model for this type of project involves teaming up with local investors, who are asked to secure the land and labor, with the company providing its highly developed technical production and post-harvest expertise, as well as long-term contracts guaranteeing the purchase of all suitable production at a mutually agreeable price.

After several visits to explore different dimensions of Ghana’s suitability for such a venture, company representatives indicated their satisfaction with all the natural and political aspects of the project. It is reported, however, that the company was unable to find investment partners in the country and was therefore obliged to turn its attention to other ACP countries in Africa. It eventually announced sourcing agreements in March 2008 with local investors in Mozambique and Angola for banana production activities worth an estimated \$120 million, and creating 6,000 new jobs by 2010.

Ghana’s failure to capitalize on what appears to have been a first option on this world-class opportunity is damning. If, despite its best efforts, the government of Ghana and all its investment promotion agents proved unable to generate sufficient interest in a project of this magnitude, with a partner of this caliber, there is reason to challenge their effectiveness, the availability of significant investment capital for agricultural projects, or both. Moreover, certain cultural norms contributing to risk-aversion warrant greater exploration and understanding, in hopes of leading to “homegrown” interventions. These norms include what was widely characterized during this diagnostic as a lack of trust among business partners, whether they are individual farmers or even more substantial commercial enterprises. This lack of trust often incorporates an unwillingness to share control over enterprises or even an antipathy toward sharing corporate information that might lead to extension of credit or investment. Another factor that plays into risk aversion in Ghana is the very strong responsibility business owners feel toward their extended families and, in turn, the sense of entitlement family members exhibit toward the fruits of their brethren’s enterprise. As one long-time foreign resident of Ghana commented, this factor may cause Ghanaian enterprises “to grow as large as they need to, but not larger.”

It is a recent truism of the developing world that increased use of the formal tools of doing business—including contracts, credit registries, standardized accounting practices, separation of personal monies from business accounts, and others—supports more trust in an economy, and therefore more growth. This can prove true for Ghana, its agricultural sector in particular. Although innovation in the sector may be limited by hard-to-shake norms and conditions, these deterrents must not be deemed “unchangeable.” Rather, they warrant continuous and detailed consideration as Ghana progresses in moving its agricultural sector toward reduced poverty and enhanced growth.

21 Peter Jaeger, *Ghana Export Horticulture Cluster Strategic Profile Study, Part I—Scoping Review*, (2008), at 14.

THE AgCLIR RECOMMENDATIONS: TOP PRIORITIES

This report contains over 200 recommendations that suggest—in terms ranging from the very broad to the highly specific—a variety of approaches to improving Ghana’s environment for agricultural enterprise. Although each of the report’s recommendations contributes to an overall vision for how Ghana can continue its emergence into the world economy, the following can be considered the **top** priorities:

CROSS CUTTING ISSUES

1. Make all laws available to the public in a more thorough, user-friendly format than that currently provided by existing sources.
2. With respect to all government-initiated or support websites pertaining to agriculture, including those that provide descriptive information about investment opportunities, markets, resources, and other important information, enact a plan for the regular updating and sustainability of the sites. Consolidation of certain web-based information sources may be necessary.
3. Without re-creating donor-supported work that has been done in the recent past, move forward with the creation of a workable law on cooperatives that supports the cooperative/FBO model as sustainable means of local investment. Program support for FBOs—whether donor or government-funded—should include widespread education of FBO participants on how FBOs can be used as a mechanism for establishing and growing enterprises, using new agriculture technologies, getting credit, enhancing worker training and productivity, generating investment, and so forth.

STARTING A BUSINESS

1. Review investment promotion activities to ensure that local and foreign investors are better attuned to the promise of agribusiness investments.
2. Reinforce the promising MiDA program of farmer and enterprise training in commercial agriculture, pursuant to facilitating the conversion from a subsistence mentality to that of a commercial undertaking.

DEALING WITH LICENSES

1. Secure the ratification and enactment of the draft Seed Law and and Plant Quarantine Law, as well as the regulations that will accompany their implementation, as important weapons in the attack against Ghana’s agricultural productivity problems. Develop a comprehensive plan for implementation of the new laws, so that their practical effects can efficiently enter the marketplace and strengthen commerce in the agriculture arena.
2. Revisit all licensing regulations governing crop protection products to ensure that they are limited to legitimate scientific and technical and environmental considerations only.

EMPLOYING WORKERS

1. Analyze and evaluate all donor- and government-support directed over the past five years to FBOs with an eye toward lessons learned and pitfalls to be avoided. Identify those interventions that were started and then abandoned and determine whether they should be revisited or relaunched.
2. Strengthen and expand opportunities for vocational education and training. Continue improvements to primary and secondary education systems, with particular emphasis on encouraging higher rates of primary-school completion and progress to secondary school. Examine how, particularly with respect to girls, issues of infrastructure and sanitation impact the decision to pursue secondary education.

REGISTERING PROPERTY

1. Consider implementation of the diagnostic roundtable recommendation favoring establishment of a Parliament-supported high-level commission addressing the long-term future of land ownership in Ghana.
2. Recognizing that kings and paramount chiefs are essential allies in solving the land tenure crisis in Ghana, develop pathways to integrate them more closely into the formal land attribution process, by giving formal recognition and tax-free status to fees collected, as well as other accommodations to remove the barriers to cooperation between constitutional and customary land authorities.

GETTING CREDIT

1. Improve lenders' access to information and documentation on titles and claims. There are some efforts said to be under way to improve this situation, but this seems to not be coordinated and lenders do not know the status of any such programs. An asset registry, which would enable lenders to establish the priority of claims on an asset, would be particularly helpful for both moveable and fixed collateral.
2. Expand the credit bureau's remit to include collecting positive information on borrowers to provide all lenders with an indicator of their creditworthiness. As the situation now stands, lenders only have access to negative information and defaulters may be penalized, but high-quality borrowers will not benefit from the credit reporting system. This arrangement favors lenders who do not want other lenders to poach their clients, but it is not favorable to borrowers who might get a better deal elsewhere.
3. Formalize the sharecropping system so that such transactions are recorded. Until these transactions are documented there will be almost no way for the formal financial sector to reach them and the sharecroppers will remain "unbanked."

PROTECTING INVESTORS

1. Conduct an in-depth study of Ghana's use of the free zone model as a means of supporting agricultural investment. Using lessons learned from other countries and experiences of local companies using the model, evaluate how strengthened government commitment to free zones can result in stronger investments.
2. Create linkages between more well organized FBOs and Ghana's business schools, developing partnerships in marketing and business development services.

PAYING TAXES

1. Institutionalize and enforce standard operating procedures that require staff to *always* be in IRS offices on a published work schedule. There were many reports of an IRS assessor not being available after a taxpayer had spent time and money to reach the office to pay taxes.
2. Establish more IRS offices in secondary cities to better service these and surrounding populations. Currently, agribusiness and other entrepreneurs must often travel far to pay their taxes; this inconvenience takes them away from their business and increases their costs for travel and other items.

TRADING ACROSS BORDERS

1. Recalibrate focus of recent development programs to increase attention to food crops, especially those that make up a large percentage of domestic consumption.
2. Review the extensive documentation required for imports and exports, focusing in particular on the Ministry of Food and Agriculture. Consider replicating high-performing international benchmark countries including Singapore and Denmark. Particular focus should be paid to documentation and procedures required for perishable products. Review policy on mandatory permits for imports/exports in light of similar regimes with less regulatory burden for the private sector; including trade licensing.
3. Prioritize the creation of a sustainable, trade information system. Attention needs to be paid to (a) taking advantage of already existing information via GCNet, (b) providing market information cheaply and broadly, and (c) considering the formation of a public-private partnership to incorporate information from international market research firms on supply and demand trends. Employing a public-private partnership model is recommended.

ENFORCING CONTRACTS

1. Move forward with plans to bring a Commercial Court and fast-track high courts to regions beyond Accra.
2. Continue anti-corruption initiatives in the courts, including posting of court fees; public admonitions against seeking or paying bribes; prosecution of corrupt behavior; and teaching of ethics in all formal environments, including the law faculties, the Ghana School of Law, the Ghana Bar Association, and the JTI.
3. Promote continuing training among lawyers, bankers, business development professionals, and others about specific contracting issues relevant to the agricultural sector; with an emphasis on managing risk.

CLOSING A BUSINESS

1. Create workshops for the banking community to familiarize bankers with the insolvency law and bankruptcy concepts generally, with an emphasis on banks' roles in reorganization.
2. Design and implement an outreach program to the universities to assist in the training of professors in bankruptcy and insolvency concepts and laws with a view toward developing curriculum designed to educate law students on bankruptcy and other commercial concepts.



STARTING A BUSINESS

In Ghana's agricultural sector, as in much of the remainder of the economy, most economic activities begin informally. A father introduces his son or daughter into the farming practices of the family plot. A woman buys vegetables from the central wholesale market in Tamale and brings them back to her neighborhood for re-sale. A young man accumulates and repairs a collection of knapsack sprayers and irrigation pipes and nozzles, sets up a table at one of the public markets in Accra, and begins selling his wares. While no source offers a precise calculation of the percentage of agricultural businesses that operate informally (whether they are farms, traders, processors, or input and equipment vendors), smallholder farms—virtually all of which operate in the informal sector—are believed to represent some 80% of total agricultural production in Ghana. Based on anecdotal information gathered over the course of this diagnostic, along with the preponderant role of agricultural production within the agribusiness sector, it seems reasonable to assume that 75–80% of the agriculture sector operates informally.

Informality within Ghana's agricultural economy is viewed by some as a problem to be solved and by others as a symptom of underlying flaws in the sector that, once addressed, will automatically lead to a natural transition toward greater "formalization" within the sector. From the point of view of the government and its regulatory agencies, informality complicates the collection of taxes, the compilation of sectoral statistics, and the enforcement of regulations ranging from food safety to environmental protection. From the point of view of the informal sector participants themselves, informality is seen as providing shelter from all these burdens the state seeks to impose and the costs that compliance entails. This situation is certainly not unique to the Ghanaian agricultural sector. Informality is the rule, rather than the exception, for agricultural enterprises in most developing countries of the world.

To the extent that informality is seen as an impediment to the state's ability to oversee the sector in an orderly manner, and perhaps even as a constraint to long-term growth and profitability of sector participants themselves, the state may seek to draw informal agricultural enterprises into the formal sector. In doing so, several considerations suggest themselves:

STARTING A BUSINESS	
<i>Doing Business</i> Ranking 2009	137
<i>Doing Business</i> Ranking 2008	143
Procedures (number)	9
Duration (days)	32
Cost (% gross national income per capita)	32.7
Paid-in minimum capital (% gross national income per capita)	16.6

1. Informality cannot be eliminated by legislation or regulation alone. Indeed, it is legislation and regulation that constitute primary reasons why actors determine to remain informal in the first place and prolong their informal status for as long as possible.
2. The reasons why governments see informality as a bad thing—impeding tax collection and sector regulation—have little or no traction with agribusiness participants. Other arguments must be crafted and communicated to advance the transition toward formality.
3. Many of the conventional benefits—access to credit, access to technical assistance, access to markets through FBO affiliation—commonly attributed to formality ring hollow to actors

“Ultimately, government will probably need to coax agricultural sector participants into the formal sector through a combination of light regulations and heavy incentives.”

within the sector who have seen other farmers, agrodealers, or processors make such transitions, only to learn that these benefits proved elusive, but that the burdens imposed on them were real.

Ultimately, government will probably need to coax agricultural sector participants into the formal sector through a combination of light regulations and heavy incentives. Light regulations could include extended probationary periods for CPP dealers, during which the emphasis would be on training and education, rather than compliance and enforcement. Tax holidays or high earnings thresholds could also be considered, as might “tourist visas” into the formal economy, under which market traders could participate in organized market settings with temporary licenses, allowing them to verify for themselves the benefits of formal registration. Governmental success in providing access to credit for agricultural small and medium-sized enterprises (SMEs) operating in the formal sector would also serve as a positive inducement.

In Ghana, the path toward entering the formal economy from the agricultural sector is enormously challenging. While *Doing Business* bases its evaluation of the ease of starting a business on the steps involved in registering a domestically owned, limited liability company in a major urban center, the issues involved in the successful launch of a new agricultural enterprise are substantially more complex. The issues range from the immediate to the long term, and impact the ability of an enterprise to not merely join the formal sector, but in fact launch a sustainable concern.

For example, an agriculture production operation must consider the underlying availability of land, labor, and capital. Specifically, the following issues must be addressed:

- What are the constraints on availability of arable land?
- Is there an adequate supply of willing and capable labor to perform the production, harvest, and transformation functions needed to prepare the product for market?
- Are financial institutions favorably predisposed to extend credit to the agricultural sector, both for short-term working capital needs and for long-term capital investments?

Positive answers to these three questions are necessary, but not sufficient, conditions to a favorable assessment of the environment for starting an agricultural enterprise. In addition to land, labor, and capital, additional

requirements for a successful agricultural enterprise start-up may include infrastructure, markets, innovation, and investment.

INFRASTRUCTURE.

Are the roads, ports, and airports adequate for the transfer of product from farm gate to the product's markets at competitive costs? Are there pack houses to transform the product, and refrigerated warehouses to store it, so that market requirements for product quality, sanitation, and safety can be met? Can the power grid be relied upon to deliver a consistent supply of cost-effective energy? Are the water delivery systems adequate to meet irrigation requirements?

MARKETS.

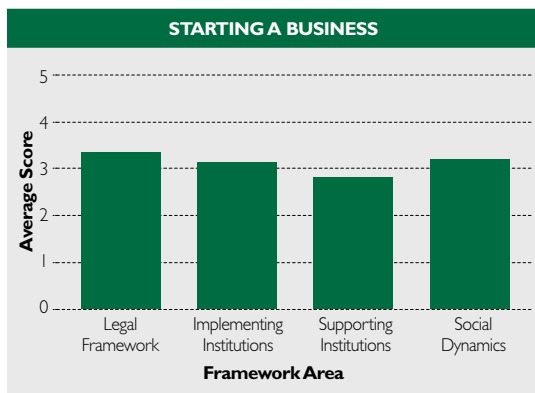
Are there ready markets—domestic, regional, and offshore—to provide profitable outlets for the agricultural products that can be efficiently produced in Ghana? Are the markets accessible to average-sized participants across the agricultural enterprise value chains? Can Ghana meet the requirements of its customers with respect to sanitary and phytosanitary standards, maximum residue levels, and third-party certification of its foodstuffs, thereby insuring sustainable market access? Is there a market information system that provides agricultural enterprises with a clear and timely understanding of their market options at any given moment? Are public and private sector institutions available to assist agricultural enterprises in development and expansion of markets for their agricultural products?

INNOVATION.

Are there agencies and institutions in Ghana that serve as “Centers of Excellence” with respect to modern agricultural practices and technology? Do laws and regulations make it easy to introduce new planting materials and agricultural inputs designed to improve yields and on-farm profitability? Once agricultural innovations have been developed or introduced into the country, are they communicated to the production sector in ways that ease and accelerate their adoption?

INVESTMENT.

Can foreign investors easily identify local investors or partners with whom to establish agricultural joint ventures? Are foreign investors accorded reasonable treatment with respect to share of ownership, protection of property and ownership rights, and repatriation of profits?



Although many of these questions are analyzed elsewhere in this report, it is necessary to address a number of them in this chapter as well. These issues exert a significant influence on the initial evaluation by local and foreign investors alike with respect to the attractiveness of Ghana as a destination for their agricultural enterprise investments. In addition, these same issues provide a convenient framework within which to evaluate the environment for new agricultural enterprise ventures in Ghana.

The AgCLIR indicator scores reflect a state of affairs pertaining to Starting a Business that has some strengths and some weaknesses. As reflected in this section's graph, the legal framework, implementing institutions, and social dynamics fall in the "slightly better than neutral" range. The supporting institutions for Starting a Business are the weakest component of the AgCLIR analysis.

LEGAL FRAMEWORK

BUSINESS REGISTRATION.

In the Starting a Business component of *Doing Business 2009*, the World Bank ranks Ghana 137th out of the 181 countries surveyed and 23rd among the 46 Sub-Saharan countries considered in the report. While this represents a small improvement from a 2008 ranking of 143rd, Ghana remains in the bottom quartile globally on this indicator, and squarely in the middle with respect to Sub-Saharan Africa.

Ghana's **Companies Code** provides for establishment of domestically owned companies, joint-venture companies with foreign partnership, and externally owned companies. Although the costs and minimum equity requirements differ by company type, the procedures for registration are similar for all three types, as outlined below:

STEP 1—Registration with Registrar General's

Department. Incorporate a company at the Registrar General's Department. The information required includes:

- The name of the company with "Limited" as the last word in the name
- The nature of the company's business
- The names of the first directors of the company
- A statement that the liability of the company is limited
- The share capital and its division into shares of no par value
- A statement that the company possesses all the powers of a natural person of full capacity
- A limitation on the powers of the board of directors in accordance with section 202 of the Companies Code
- Any other lawful provisions relating to the constitution and administration of the company

The department has five working days to complete formalities if all documents are in order.

STEP 2—Minimum Equity Contribution.

Foreign investors should comply with the Ghana Investment Promotion Council (GIPC) Act 478 regarding minimum equity requirements:

- joint venture—US\$10,000
- 100% foreign-owned—US\$50,000
- all trading enterprises—US\$300,000

STEP 3—Registration with GIPC.

The investor then registers with the GIPC (after paying the relevant fees), which has five statutory working days to complete the registration process, provided the registration forms are in order.

STEP 4—Wholly Ghanaian-Owned Enterprises.

Wholly Ghanaian-owned enterprises do not need to register with GIPC since the minimum foreign capital requirement does not apply to such enterprises.

STEP 5—Immigrant Quota.

All wholly Ghanaian-owned enterprises and enterprises with foreign participation seeking immigrant quota facilities in respect of expatriate personnel (experts) for their businesses should satisfy the relevant minimum capital requirements specified under Section 30 of GIPC Act 478. Immigrant quota request is made in a letter to GIPC.

STEP 6—Registration with IRS and VAT

Secretariat. All enterprises must register directly with the Internal Revenue Service (IRS) and the Value Added

Tax (VAT) Secretariat for purposes of statutory tax, e.g., taxes, rebates, and exemptions thereof.

STEP 7—Environmental Impact Assessment

Certificate. Enterprises must register and obtain an environmental permit from the Environmental Protection Agency (EPA).

These steps for company registration are clearly defined; there are forms or templates for each of the documents required for company registration; and the time lines, although more honored in the breach, according to private observers, are ambitious and appear to encourage implementers to accelerate the approval process. Indeed, interviews with a wide variety of private company officials confirmed that this registration process is generally considered prompt and trouble-free.

The provisions for minimum equity contributions were not reported as unduly burdensome by the foreign-owned or joint venture entrepreneurs, although these provisions clearly discriminate in favor of Ghanaian-owned enterprises. The same can be said of the GIPC registration requirement, mandatory for foreign, but not for Ghanaian, enterprises.

On the other hand, as detailed in this report's chapter on Employing Workers, the process for obtaining and renewing resident visas for expatriate executives and senior supervisors is considered protracted and arduous. Issues surrounding IRS and VAT registration are detailed in this report's chapter on Paying Taxes. The requirements of the EPA, including the Environmental Impact Assessment Certificate are analyzed in the Dealing with Licenses chapter.

COOPERATIVES AND FBOs.

An important consideration in the agriculture sector is the formation of farmer-based organizations (FBOs) that are intended to function as profitable agriculture enterprises. In Ghana, an FBO can be organized as a cooperative, a company, or a non-profit organization.²² In theory, cooperatives and FBOs are businesses that are owned and controlled by the farmers who use its services. *Supply cooperatives* supply their members with inputs for agricultural production, including seeds, fertilizers, fuel, and machinery services. *Marketing cooperatives* are established by farmers to undertake transformation, packaging, distribution, and marketing of farm products (both crop and livestock).²³ Services received and earnings allocations are shared by the cooperative/FBO members on the basis of use.

In Ghana, as in many African countries, the history of cooperatives is one that discourages confidence in this model as a promising investment opportunity for small producers. Beginning with the use of cooperatives as a mechanism for serving colonial powers, followed by a mid-twentieth-century norm of strict government control over cooperatives, the model engenders very little trust. There has been scarce progress in the development of a new cooperative law to replace a **1968 decree governing agriculture cooperatives** in Ghana. A 2001 draft law was reportedly rebuked by the World Bank, due to a continued emphasis on government control over cooperatives, and little appears to have come from a donor-supported initiative in 2003 to draft a new law.²⁴

Cooperatives and FBOs need not formally register to function. If they wish, however, to enter the formal sector (and thereby access the many advantages of doing so, including limited liability and access to finance), they can register as companies with the Registrar General or identify themselves as cooperatives to the Department of Cooperatives under the Ministry of Manpower Development and Employment.

Beyond the basic process of registering a business—which is essentially the same for agricultural enterprises, including FBOs, as it is for businesses in Ghana's other sectors—there are certain key concerns that arise at the outset of the formalization of an agricultural enterprise. These are discussed in turn.

INVESTMENT SECURITY.

The **Ghana Investment Promotion Act**, 1994 (Act 478), provides guarantees to all enterprises; free transferability through any authorized dealer bank in freely convertible currency of dividends or net profits attributable to a foreign investment; payments in respect of loan servicing where a foreign loan has been obtained; and remittance of proceeds (net of all taxes and other obligations) in the event of sale or liquidation of the enterprise or any interest attributable to the investment.

Ghana is a member of the Multilateral Investment Guarantee Agency (MIGA) of the World Bank, which provides investment guarantees against non-commercial risk for investments in developing countries. Additionally, the government has entered into bilateral Investment Promotion and Protection Agreements (IPPAs), as well as double taxation treaties with a number of countries to further enhance the protection and security of the investment regime.

22 MoFA, AASIP, *Operating Guidelines for the FBO Development Fund and Extension Development Fund* (2005), at 11.

23 Farmers may also rely on credit cooperatives as a source of financing for both working capital and investments.

24 See National Cooperative Business Association, *Building Better Co-op Law* (June 2003).

KEY LAWS AND REGULATIONS

- The Companies Code, 1963 (Act 179)
- The Partnership Act, 1962 (Act 152)
- The Business Name Act, 1962 (Act 151)
- Ghana Investment Promotion Act, 1994 (Act 478)
- The Internal Revenue Act, 2000 (Act 592)
- Fisheries Act, 2002 (Act 625)
- Forestry Commission Act, 1999 (Act 571)
- The VAT Act, 1998 (Act 546)
- Banking Law, 1989 (PNDCL 225)
- Social Security and National Insurance Trust Law
- Environmental Protection Agency Act, 1994 (Act 490)
- The Labour Act, 2003 (Act 651)
- Pesticides Control and Management Act, 1996 (Act 528)
- Cooperatives Societies Decree, 1968 (NLCD 252)
- Land Title Registration Law, 1986 (PNDCL 152)
- Lands Registry Act, 1962 (Act 122)
- Water Resources Commission Act, 1996 (Act 522)
- Water Use Regulations, 2001 (LI 1692)
- Irrigation Development Authority Regulations, 1987 (LI 1350)
- Prevention and Control of Pests and Diseases of Plants, 1965 (Act 307) (under revision)
- Seed Inspection and Certification Decree, 1972 (NRCD 100) (under revision)

LAND.

Difficulties in gaining access and securing durable title to good agricultural land rank high on the list of constraints to starting an agricultural enterprise in Ghana. In Ghana there are three types of land ownership:

- State lands, which are owned by the elected government of Ghana
- Stool or skin lands, which are held in trust by the traditional rulers and chiefs of Ghana for their people (stool land in the southern part of the country, where kings and chiefs sit on stools; skin lands in the northern part of the country, where kings and chiefs sit on animal skins)
- Family or clan lands.

The Lands Commission is the custodian of all government lands (estimated to represent somewhat less than 20% of the total land in Ghana), which are usually attributed on the basis of lease agreements. Land can be leased to Ghanaians for use as their residence for a

term of 99 years. All other leases range in length from 10 years to 50 years, depending on the use to which the land will be put. Lands for the production of permanent crops such as cocoa and citrus carry 50-year terms. Feed lots and poultry farms, which tend to be located in peri-urban areas and thus require periodic relocation as urban areas expand, generally run for only 10 years.

The process for registering title to land is detailed in this report's chapter on Registering Property. In short, a combination of inadequate policy and regulatory framework, fragmented institutional arrangements, and an underdeveloped land registration conspire to make land transactions both inefficient and highly vulnerable to challenges.

PLANTING MATERIALS.

While it is difficult to know with certainty which came first—the chicken or the egg—it is easier to know what comes first in production agriculture—the seed. Without access to reliable, productive, consistent planting material, agricultural start-ups rarely get off the ground. Yet access to planting material that meets international standards for purity and productivity can be a real challenge in Ghana. Current law—the **Seed Inspection and Certification Decree, 1972 (NRCD 100)**—requires a long and complex array of qualifying steps prior to certification of new seeds and other planting materials for broad use within Ghana. This law impedes the type of innovation needed to attack the low productivity that is endemic across the agricultural sector. Furthermore, it diverts scarce research resources away from a focus on improving farm productivity and profitability, and toward such frivolous pursuits as the organoleptic appeal to pigs of various types of feed grains. Final certification and release of seed into the Ghanaian market can take 5–7 years if all goes well.

In 2008, a draft seed law was crafted to liberalize access to the Ghanaian market for private sector breeders and seed companies, including provisions for reciprocal recognition of seed certification across the Economic Community of West African States (ECOWAS) zone. Such provisions, once implemented, constitute an important first step in a much-needed liberalization of the regime for introducing new seed and planting materials into the Ghanaian agricultural economy.

SANITARY AND PHYTOSANITARY COMPLIANCE.

Export agriculture is a powerful driver for the agricultural economy in many developing countries. Provided an operation can meet the many quality, health, food, and

“Without access to reliable, productive, consistent planting material, agricultural start-ups rarely get off the ground. Yet access to planting material that meets international standards for purity and productivity can be a real challenge in Ghana.”

plant safety requirements in destination market countries, export agriculture can give a real earnings boost to a country's agricultural sector; and on occasion to the broader economy as a whole (such as the case of cocoa in Ghana). The international phytosanitary certificate acts as a sort of agricultural passport, assuring access for a given country's produce into the markets of the world. Just as the loss of a passport can severely restrict a person's ability to move internationally, so too the loss of credibility in a country's sanitary and phytosanitary (SPS) compliance system can restrict—or completely block—access for that country's agricultural products into international markets. If an investor's business plan is predicated on producing or processing agricultural crops for sale to international markets, a solid and credible SPS system is a *sine qua non*.

Current law—the **Prevention and Control of Pests and Diseases of Plants Act, 1965 (Act 307)**—provides for a basic level of compliance with the requirements of the International Plant Protection Convention (IPPC). Phytosanitary certificates issued by the Plant Protection and Regulatory Services Directorate of Ghana's Ministry of Food and Agriculture are universally accepted by plant quarantine authorities in the countries to which Ghana exports its agricultural products. The basic law has been in effect since 1965 and therefore does not reflect any of the revisions that have been made to the IPPC since then. A new Plant Quarantine Law has been drafted and will be submitted to the national legislature for consideration during its fall 2008 session. This new law is expected to bring Ghana's SPS legal framework into full compliance with all international regulations and standards.

IMPLEMENTING INSTITUTIONS

BUSINESS REGISTRATION.

The principal implementing institution for starting a business in Ghana, agricultural or otherwise, is the office of the **Registrar General (RG)**. In its literature, the RG provides a detailed description of the certifications it provides, the time frames for delivery of each certificate, and the fees charged both for the forms it provides and the certificates it issues. With respect to registering new agriculture enterprises, the sector is somewhat disadvantaged by a lack of walk-in offices located in rural areas, most prominently Tamale. Although this is likely to change, generally positive observations about the major administrative revisions made by the RG in 2008 were tempered during this diagnostic by wariness over access.

COMPARATIVE IRRIGATION STATISTICS, SELECTED COUNTRIES OF WEST AFRICA

Country	Total Irrigation (ha)	% of Cultivated Area	Irrigation Potential (ha)	Total Irrigated as % of Potential
Ghana	30,900	0.5	1,900,000	1.6
Benin	12,258	0.4	322,000	3.8
Burkina Faso	25,000	0.6	165,000	15.2
Cameroon	25,654	0.4	290,000	8.8
Cote d'Ivoire	72,750	1.1	475,000	15.3
Guinea	94,914	6.2	520,000	18.2
Senegal	119,680	4.8	409,000	29.3
Africa	1,344,4875			

Source: FAO, AQUASTAT Survey, 2005

One important function that is not yet performed by the RG, but is very important for future understanding of Ghana's agriculture sector, is that of tracking the types of businesses that are registered. Although new registrants are requested to identify on their paperwork the type of company being registered—whether it is categorized as trade, manufacturing, construction, services, agriculture, and so forth—this information is not yet captured in the RG's electronic database. According to RG representatives, this is expected to change with software improvements. Whether this happens in the near term is worth watching closely: without sufficient information about what types of companies are being registered, policy makers will not have a clear understanding of the composition and actual size of Ghana's key economic sectors.

Foreign companies are required first to register with the RG. Then, certification by the **Ghana Investment Promotion Centre (GIPC)** is required for all enterprises where there is foreign equity, whether partial or full. The GIPC has primary responsibility for facilitating the entry of foreign investment into Ghana. In this capacity it serves as the liaison among investors and the government and its agencies, lenders, and any other entities that are involved in the launch of a new enterprise. The GIPC also maintains a database on investment incentives, and assists investors in navigating the permit and certification processes that the law requires. GIPC-facilitated incentives for investments in agricultural and agro-processing activities include duty exemptions for machinery and equipment, preferential corporate tax rates, tax holidays ranging from 3–10 years, location incentives (especially favorable to investments in rural areas and in the three northern regions), and capital allowances.

Time lines for GIPC issuance of investment certificates are widely published, although the agency's performance is reported to be somewhat slower than the time lines indicate. During this diagnostic, private sector operators were generally positive in their comments on the GIPC's facilitating role. It was felt, however, that the GIPC is more effective in facilitating investments into the manufacturing and services sectors than into agriculture. The difficulties of attracting local partners into agricultural ventures appear to be largely due to aversion to the risks associated with agricultural enterprise, and the ready availability of lower-risk or higher-yield opportunities in other sectors of the Ghanaian economy.

Ministry of Food and Agriculture (MoFA).²⁵ The Ministry of Food and Agriculture is responsible for several of the agencies whose operations are key to success in the agriculture sector. They range from the provision of extension services to phytosanitary certificates and pest risk assessments to agricultural research and innovation to irrigation development and management. MoFA's mandate is vast; not surprisingly, its performance varies widely across this range of services.

Agricultural Engineering Services. This department within MoFA is charged with the introduction and adaptation of agricultural equipment and production techniques to improve pre-harvest productivity and to reduce post-harvest losses. Due to the small average size (less than three acres) of agricultural holdings, there is no way to implement any large-scale mechanization programs in the country. In a global agricultural economy of tractors and combines, Ghana's agriculture remains reliant on hoes and machetes.

Agricultural Extension Services. Once innovations have been vetted for introduction into Ghana, it becomes the responsibility of MoFA's Department of Agricultural Extension Services (DAES) to disseminate this information to the farming public. Since agriculture accounts for 60% of Ghana's 10.2 million-person workforce, this means that DAES is responsible for communication of information on good agricultural practices and production innovations to over 6 million farmers. Understandably, there are not enough hours in the day, boots on the ground, or cedi in the budget to assure universal access to extension services. One of the primary benefits cited in favor of cooperative affiliation, or FBOs, is that of greater numbers of farmers being able to attract extension agents.

Plant Protection and Regulatory Services (PPRS). As discussed earlier, PPRS delivers phytosanitary certificates that comply with the requirements of the IPPC and the countries that import Ghana's agricultural products. A new draft Plant Quarantine Act, currently being readied for submittal to the legislature, will bring Ghana's legislation up-to-date with changes in international practice adopted since the original law was enacted in 1965. A planned transfer of responsibility for plant disease and pest management functions from PPRS to MoFA district offices should allow for closer attention to plant quarantine, pesticides management, and seed inspection and certification, which will remain core responsibilities for the service.

Irrigation Development Authority. Ghana's agriculture remains largely dependent on rainfall, which serves to perpetuate the vulnerability of the sector.²⁶ Only 0.5% of Ghana's cultivated land is currently under irrigation. This figure places it in the bottom ranks among West African nations. These figures are even more striking in light of the fact that less than 8,600 hectares of the irrigated area in Ghana—28% of the total—are public schemes, while the remaining 72% is privately owned and operated. The government has declared that one of its main objectives for the agricultural sector is to accelerate the provision of irrigation infrastructure. In conversations with representatives of IDA, however, it became apparent that irrigation is considered only a minor element among the many factors limiting agricultural productivity in the country.

Transportation infrastructure. Road transport in Ghana is a continuous challenge. As of 2006, only 45% of all roads in the country were considered to be in good condition, according to a survey conducted by the Ministry of Roads and Transport.²⁷ The port of Tema serves as a main trans-shipment port for West Africa, and has recently completed, with World Bank support, the conversion of Shed 9 into a fully refrigerated facility to improve handling and storage of perishable agricultural commodities at the port. Also, the construction of cold storage facilities at Kotoka International Airport to improve handling and post-harvest quality maintenance of air-freight commodities is planned.

The Millennium Development Authority (MiDA), established for the purpose of implementing the transfer of \$547 million over five years by the United States' **Millennium Challenge Account**, will focus on agriculture as one of its primary targets for

25 Ministry of Food and Agriculture website, www.mofa.gov.gh.

26 Institute of Statistical, Social and Economic Research, *The State of the Ghanaian Economy in 2006*, at 103–38.

27 *Id.* at 182.

comprehensive development. MiDA aspires to improve the network of trunk and feeder roads so as to reduce the transportation costs on the movement of agricultural goods and to encourage new investment in Ghanaian agriculture. MiDA's transportation project will fund various road improvement projects, including:

- Upgrades to 14 km of NI Highway to reduce bottlenecks in accessing the International Airport and the Port of Tema;
- Improvements of trunk roads by rehabilitating or constructing up to 230 km of trunk roads in the Afram Basin Zones; and
- Improvements of Lake Volta ferry services to facilitate the growth of agriculture in the Afram Basin Zone by improving the ferry services of Volta Lake Transport Company (VLTC) that connect Adawso on the southern shore of Ekye Amanffrom on the northern shore.²⁸

SUPPORTING INSTITUTIONS

CREDIT.

Poor access to credit within the agricultural sector is widely viewed as a major constraint to growth in the sector. **Commercial banks** are extremely reluctant to loan to agriculture. Where loans are extended, terms are typically short (6–36 months), thereby discouraging long-term investments in structural or varietal transformations at the production and agroprocessing levels. There do not appear to be any broad government programs designed to encourage private lending to agricultural enterprises, nor are there any government entities (akin to FIRA—Fideicomisos Instituidos en Relación con la Agricultura—in Mexico) that serve to reduce private bank exposure on agricultural loans. Export promotion agencies, such as the **Export Development and Investment Fund** (EDIF) and the **Ghana Export Promotion Council** (GEDC) are themselves constrained by funding and quite restricted in the types of activities they can support.

ELECTRICITY.

Demand for electrical power in Ghana has been growing at 14% annually, far outstripping growth in total supply. The **Electricity Company of Ghana** loses 4% of its domestic energy production through transmission losses, and 24% more as a result of obsolete equipment in its distribution system.²⁹ At the same time, there is a lack of reliable and affordable energy for the agricultural

economy. In one case, the unreliability of the electrical grid required a packing operation to resort to free-standing generators to run the plant. In this instance, costs associated with generator operations amounted to 60 % of total operating costs for the plant.

INNOVATION AND TECHNOLOGY.

There is a well-developed network of institutions of higher learning in Ghana. Training in agricultural enterprise, however, does not appear to occupy a prominent place in the academic curricula. At both the secondary and tertiary educational levels, little emphasis is placed on training for the business management aspects of agricultural activities. This under-emphasis extends to the SME production sector as well, where the problem is compounded by a very high rate of illiteracy among the farming population.

Likewise, there are well-staffed **agricultural research centers** across the country, led by the Crop Research Institute (CRI) in Kumasi and the Savannah Agricultural Research Institute (SARI) outside Tamale. These institutions are limited in their ability to serve as centers of excellence and incubators for innovation, in part by their role as propagative “gate-keepers,” in part because of their funding structure, and in part because of the structure of agricultural production in the country.

With regard to planting materials, grains, legumes, and selected tubers and oilseeds proposed for distribution within Ghana—regardless of productivity and suitability findings in similar agronomic areas elsewhere—must undergo three years of agronomic trials, along with one year of on-station research to confirm yields and consumer acceptability, before submittal to the National Varietal Release Committee, made up of representatives from MoFA, SARI, CRI, the Ghana Grains and Legumes Development Board (GLDB), universities, and the private sector. All told, the time line from original request through to final release can easily extend to eight years.

For a country like Ghana, where low yields derived from unimproved planting materials represent an overwhelming constraint to improving food availability and farmer incomes, this protracted pre-introduction process represents a truly stifling barrier to innovation. In most countries, the pre-release procedures focus essentially on a “do no harm” orientation, to insure that the introduction of new materials does not inflict damage on existing production systems or agro-ecologies. The remainder of the considerations associated with new

28 Millennium Development Authority website, available at www.mida.gov.gh.

29 *The State of the Ghanaian Economy in 2006*, supra note 26, at 151–55.

varietal introductions is viewed as essentially commercial in nature, and private sector propagators and distributors of planting material assume responsibility for demonstrating yield characteristics to the production community that is their target audience. The new seed law, which was expected to be presented to the Parliament in its October 2008, should go a long way to shortening this pre-release time line by providing for regionally reciprocal recognition, such that planting materials released by other West African nations will be eligible for immediate distribution within Ghana.

The funding systems for SARI and CRI require that 30% of their budgets be funded by revenues they generate themselves. Neither institution has been able to attain a self-funding level of even 5%, which means that research budgets are more than 25% below requested levels. This system forces the institutes to focus on projects that promise fast paybacks, rather than on long-term solutions to chronic agricultural problems in Ghana. This dilemma is compounded by the fact that all revenues accruing to the institutes' efforts in the production of breeder seed must be handed over to the GLDB, the agency authorized to sell seed to seed growers for commercial propagation. In other countries where this self-funding system for agricultural research has been adopted successfully, the principal funders of projects come from the larger factors within the production, transformation, and agroprocessing sectors of the agricultural economy. Unfortunately, such large factors in the Ghanaian agricultural economy are most conspicuous by their absence. Production and agroprocessing units are generally very small, while the few larger companies often appear to be more concerned with their own struggles for survival and less with how to allocate their research and development budgets.

The situation for fruit and vegetable seeds is much better. Breeders are mostly free to propagate these seeds. The fruit and vegetable seed industry points the way to how the new seed and plant quarantine laws can be effectively implemented.

Mechanization, another area where innovation has been slow to gain traction in Ghana, suffers from the basic structure of the production sector itself. Mechanization requires a certain scale of operation to permit amortization of the significant costs associated with the acquisition, operation, and maintenance of modern farm equipment. In Ghana, with an average farm size below three acres and a very weak system of cooperatives and FBOs, most mechanization techniques are out of reach.

MARKETS.

There are domestic, regional, and international markets that regularly deal in the agricultural commodities that Ghana produces. In some products, such as cocoa, bananas, palm oil, pineapple, and mango, markets have already developed an appreciation for Ghana's production. In interviews with farmers and FBOs, however, lack of information about market conditions and market opportunities—nationally, regionally, and internationally—was one of the most oft-cited obstacles to success. This diagnostic found myriad stories of crops rotting in the field or in storage, for lack of adequate information about distribution options, while at the same time prices were surging in distant urban areas due to shortages of product.

In Ghana and regionally, there are many different agencies, associations, and donor groups with a role to play in relieving these problems. Their performance has not yet provided a clear vision to farmers and FBOs of price points across and outside of Ghana, however, and thus do not yet fully support informed price-optimization strategies. The absence of reliable price and volume information by commodity, coupled with the small scale of the individual operators in the production sector, serves to compound the erratic income flows that are typical of small-holder agriculture. Recent initiatives such as the USAID-funded MISTOWA³⁰ project and the Tradenet³¹ system are promising first steps in filling this information void, but there is still an acute shortage of accurate and timely market information available to the average farmer and FBO.

In addition to its previously discussed support for road transport, MiDA also focuses on investment in the agricultural sector is its farmer and enterprise training in commercial agriculture initiative, which is designed to accelerate the development of commercial skills and capacity among FBOs and their business partners (including service providers to FBOs and other entities adding value to agricultural crops such as processors).³² As discussed in this report's chapter on Protecting Investors, there is much to be learned from past and particularly successful donor efforts in this area. At the same time, the potential for much stronger agricultural enterprise through FBOs is vast.

Ghanaian farmers and FBOs could benefit greatly from the increased availability of market information such as the Federal-State Market News Service (FSMNS) of the USDA's Agricultural Marketing Service. On a daily basis, this service gathers price data pertaining to 300 different

30 See www.wa-agritrade.net.

31 See www.tradenet.biz.

32 Millennium Development Authority website, available at www.mida.gov.gh.

fresh fruit and vegetable commodities in 31 markets in North America and Europe, from 181 different shipping points. This data is then compiled at each of the 15 FSMNS offices across the country, aggregated at the Washington, D.C., headquarters, and published online. Access to the information is free of charge. The budget for this service is \$7 million annually.³³ A similar system in Ghana, with Ghana labor rates and a far more limited range of commodities, markets, and shipping points, would cost only a fraction of the FSMNA annual budget. The Agricultural Marketing Service is generally quite generous with its proprietary technology and would likely be favorably disposed to work with Ghana in the development of such a system there.

BUSINESS DEVELOPMENT SERVICES (BDS).

The availability of services designed to assist new businesses in developing the capital they need to prosper in the agriculture arena is quite limited, especially outside of Accra. To a limited extent, well-informed entrepreneurs can identify knowledgeable business consultants who can help them secure sources of capital and become established in such a way that minimizes risk for investors. BDS professionals have experience securing productive facilities, such as formerly state-owned factories, as well as capital from banks, private investors, funds, and donors. They are not, however, widely available or accessible beyond Accra. Opportunities in agriculture deriving from rural areas do not typically have the benefit of sophisticated BDS.

DONORS.

As discussed in a recent article in *The Economist*, "The main problem is not the one poor countries and NGOs typically complain about: too little aid... Rather, the problem is that aid is fragmented: there are too many agencies, financing too many small projects, using too many different procedures."³⁴ In Tamale, there are indeed at least 150 agricultural NGOs working in the northern region alone. There is no disputing the positive effects of donor generosity and expertise in the countries that receive it. At the same time, there are at least three adverse effects that donor activities seem to have on the Ghanaian economy and recipient countries more broadly.

First, there is the problem of a donor-induced "short-term mentality." Specifically, it takes 5–7 years for most tree crops to reach full production. It can take 10 years before a country has established itself in its destination markets as a reliable supplier of a given set of agricultural

commodities. The time line for establishment of an agroprocessing complex can take 3–5 years before it can begin operation, and much longer before it can achieve a profitable and sustainable level of activity. Most donor projects, on the other hand, tend to run for 3–5 years, following which the project closes down and new projects take its place. This creates a tendency for local growers and FBOs, as well as their governments, to focus on short-term projects with immediate results, rather than the long-term sustainable projects that can have a much broader and more durable impact on the sector.

Second, there is the problem of surrendering by local and national government offices responsibility for providing support and services to the agricultural sector. In Ghana, many believe that the government has transferred control over management of the agricultural sector away into the hands of donors and NGOs. The government is seen as performing well in the development of policy, but poorly in terms of implementation, due to a shortage of staff and skills, and an excessive reliance on NGOs to get the job done.

Third, there is a tendency by farmers to "farm projects" rather than land. If new funds can reliably be expected to come along every three to five years, each one based on a new agricultural direction, there is an understandable tendency on the part of farmers and FBOs to split their attention between maximizing earnings from their land, and maximizing income from grants and program support. All too often, this dual-track strategy leads to conflict, which in turn leads to de-emphasis of the production dimension in favor of the donor dimension.

Closer coordination between projects and donors, already under way, will greatly reduce the risks of these problems, as will the adoption of longer terms with specific reference to agricultural projects. For the present, however, these swings in grower interest and emphasis represent a disincentive to potential investors in nucleus farms or agroprocessing operations.

SOCIAL DYNAMICS

ATTITUDES TOWARD AGRICULTURE.

The scope of the agricultural sector in Ghana is impressive. As stated at the outset of this report, it remains the largest contributor to GDP (over 35%), and the principal employer of Ghanaian labor (more than 55%). Despite its preeminent role in the overall economy, however, production agriculture is still viewed

33 R. Keeney, Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA (private conversation, 2008).

34 *A Scramble in Africa*, Economist, September 6, 2008, at 69.

more as a lifestyle than as a business, and remains firmly situated in the informal sector of the national economy. This situation is due to many factors, among them the generalized illiteracy among the farming population, a lack of business training at all levels of Ghanaian public education, the small scale of operation, the unpredictable income flows that are a natural concomitant of rain-fed cultivation, a lack of initiatives to organize farmers into more competitive organizational structures, and the absence of innovations in productivity and processing that could make agricultural production a sustainably profitable enterprise. Instead, the vast majority of Ghanaian farmers operate on a subsistence basis with the shortest of time horizons.

As a consequence, it has been very difficult for agroprocessors to succeed in Ghana where they rely on out-growers for their source of supply. In many instances, processing entrepreneurs have determined that the only way to secure reliable base volumes of raw material is to produce it themselves. Small holders are reluctant to invest, to sign (or honor) delivery contracts, and assume the risks inherent in adopting new varieties or technologies. Bringing a business orientation to the small holder is, as described earlier, one of the principal initiatives of the MiDA agricultural program. Even if this bears fruit, however, it will be years before an experience-based shift in the current smallholder mind-set can be expected.

LABOR FORCE.

With nearly 60% of the nation's workforce employed in the agricultural sector, it is not surprising that there is no apparent shortage of field labor for the sector. Since most participants have acquired their skills from other family members or from their neighbors within the same village, there is a dearth of technical knowledge, particularly as regards modern technologies and practices. Moreover, the low level of literacy complicates the task agricultural enterprises face in training new hires.

More troubling is the lack of supervisory managerial personnel and agricultural technicians in the labor pool. Working on a small and informal scale, with only three acres on average, there is no need to acquire a skill set that includes training and supervising a multiperson workforce, such as is required to manage a 50–100 acre farm, a pack house, or a milling facility. At the same time, immigration law makes it very difficult to bring in supervisors with these skills from elsewhere in Africa.

The same, of course, is true for senior management of large-scale companies. Since there are so few within Ghana, almost all of which are managed by expatriates or by Ghanaians with extensive overseas exposure, there is little opportunity for the average Ghanaian graduate of a university or agricultural college to acquire these skills in the form of on-the-job training.

This lack of a trained cadre of middle-level and senior agricultural enterprise managers serves as yet another constraint on expansion in the agricultural sector. Even if effective programs are initiated immediately to address this gap, it could well take a generation before there is an adequate supply of such skills within the Ghanaian workforce.

RISK-AVERSE INVESTORS.

Although the agricultural sector has grown at a rate of 4.7% per annum since 1999, this still places it behind the service sector (5.4%) and the industrial sector (5.2%).³⁵ Ghana can be fairly characterized as an "investor's market," where the range and volume of attractive investment opportunities number well in excess of the investment capital available. Under such conditions, there is competition among the different investment alternatives in Ghana for each investment dollar or cedi. Agriculture projects appear to be on the losing end of most such competitions. This disadvantageous position is usually attributed to any of several factors: higher risk, lower return, greater uncertainty, or simply that agriculture has historically not been viewed as a serious investment option on par with tourism, banking, construction, or any of the other components of the service or industrial sectors.

In this context, the case of an international fruit company is illustrative of the types of opportunities that can "get away" when confronted by investor aversion of indifference.³⁶ In 2007, one of the world's largest integrated fruit and vegetable companies sent a team to Ghana as part of its efforts to diversify its Latin American banana sourcing and to gain participation in the preferential access that Africa-Caribbean-Pacific (ACP) countries enjoy in the EU banana market. The company's model for this type of project involves teaming up with local investors, who are asked to secure the land and labor, with the company providing its highly developed technical production and post-harvest expertise, as well as long-term contracts guaranteeing the purchase of all suitable production at a mutually agreeable price.

³⁵ Institute of Statistical, Social and Economic Research, *The State of the Ghanaian Economy in 2006*, at 108.

³⁶ Peter Jaeger, *Ghana Export Horticulture Cluster Strategic Profile Study, Part I—Scoping Review*, (2008), at 14.

After several visits to explore different dimensions of Ghana's suitability for such a venture, company representatives indicated their satisfaction with all the natural and political aspects of the project. It is reported, however, that the company was unable to find investment partners in the country, and was therefore obliged to turn its attention to other ACP countries in Africa. It eventually announced sourcing agreements in March 2008 with local investors in two other African countries for banana production activities worth an estimated \$120 million, and creating 6,000 new jobs by 2010. While the company is careful to point out that it continues to pursue non-banana investment opportunities in Ghana, it is clear that its appetite for banana investments in Africa has been satisfied elsewhere on the continent.

As stated in the government's Growth and Poverty Reduction Strategy (GPRS II), "No significant progress can be made in raising the real incomes of Ghanaians as a whole without significant improvements in the productivity of the small-scale farmer and farm labourer. The means for securing such increases in productivity range from improving the complement of equipment and tools with which the small-scale woman farmer earns her living, through many intermediate stages of applying scientific and technological improvements to the farming practices of medium-scale agriculturalists, and going up to the most sophisticated systems of irrigation, high-value horticultural production, and scientific fish farming. These processes of agricultural modernization constitute the second most important leg of the strategic priorities that have been established under GPRS II."³⁷

Ghana's failure to capitalize on what appears to have been a first option on this world-class horticultural opportunity is damning. If, despite its best efforts, the government of Ghana and all its investment promotion agencies proved unable to generate sufficient interest in a project of this magnitude, with a partner of this caliber, there is reason to challenge the effectiveness of such government efforts, the availability of any significant investment capital for agriculture projects, or both.

RECOMMENDATIONS

- Continue to pursue reforms in business registration requirements that will make the process simpler, faster, and less expensive.
- Through the business registration process, track the establishment of new businesses by sector, so that more is known about the characteristics of agriculture enterprises entering the formal sector.
- Develop a carefully crafted set of incentives and

fiscal and regulatory waivers to encourage transition into the formal sector:

- Support public awareness campaigns on entrepreneurialism, business opportunities, and the benefits of joining the formal sector.
- Build awareness about public and private institutions available to help agriculture enterprises through radio programs, television programs, and billboards.
- Review the need for differential treatment of domestic and foreign-origin investments, particularly as it entails differing minimum capital requirements.
- Liberalize immigration procedures for middle-level and senior expatriate management, at least until such time as such skills become widely available in Ghana.
- Secure the ratification and enactment of the draft SPS legislation.
- Secure the ratification and enactment of the draft Seed Law. Develop a comprehensive plan for implementation, so that the practical effects of the new law can efficiently enter the marketplace and strengthen commerce in the agriculture arena.
- Strengthen the scope and reach of MoFA's Agricultural Extension and Engineering Services.
- Increase the extent of irrigation projects so as to bring Ghana into line with its agricultural competitors in the region.
- Ensure that the Irrigation Development Authority becomes an active proponent of the expansion of irrigation services across the entire country.
- Continue to invest in infrastructure improvements, especially in the areas of trunk and feeder roads that serve to move agricultural products from their sources to the markets of the country, the region, and the world.
- Continue to pursue reforms in the process by which agricultural land can be secured, registered, and held.
- Create policies and vehicles to support the extension of credit to the agricultural economy, including through the establishment of a secured transactions law and practice.
- Improve the provision of electricity services to agriculture and agroprocessing, and to the rural sector as a whole.
- Increase funding to agricultural research institutions; relieve them of the need of the need to generate unreasonably high percentages of their operating budgets; and direct them to focus less on bureaucratic compliance with outdated seed legislation and more on contributing to the severe

37 National Development Planning Commission, *Growth and Poverty Reduction Strategy (GPRS II) (2006–2009)*, November 2005, Volume I—Policy Framework, at viii.

problems of low productivity and low incomes currently plaguing the production sector:

- Expand the utilization of Tradenet and other market information systems, including the start-up of a system similar to the USDA's Federal-State Market News Service, and develop improved means of organizing farmers and FBOs to process and respond to timely and reliable price and volume information in all markets where they operate.
 - Promote longer planning horizons and greater coordination on donor programs in the agricultural sector:
- Reinforce the promising MiDA program of farmer and enterprise training in commercial agriculture, pursuant to facilitating the conversion from a subsistence mentality to that of a commercial undertaking.
 - Review the nature of agricultural education to insure that it is adequate to provide farmers and agribusinesses with twenty-first-century tools for meeting twenty-first-century challenges.
 - Review investment promotion activities to ensure that local and foreign investors are better attuned to the promise of agribusiness investments.



DEALING WITH LICENSES

Imagine an epidemic so virulent that it endangers 60% of a country's population, and so debilitating that it strips its victims of all but a fraction of their normal strength. Suddenly a cure is discovered. The cure has been found to be successful against this disease all over the world, and consists of a therapeutic course of treatment that is medically effective, readily accessible, and boasts a cost-benefit relationship, making it as compelling economically as it is medically. Unfortunately, the institutions with authority for regulating the proven therapy insist that, prior to release, an entirely new series of efficacy trials are required to demonstrate that it will indeed be as effective in their country as it has proven itself to be elsewhere, including countries with which it shares a common border. The anticipated time line for these trials is six to eight years' duration, and no relief for the victims can be expected until the trials have reached their completion and efficacy has been confirmed. In many countries, this sort of unwarranted bureaucratic obstacle to a critically needed solution would be cause for the populace to storm the research institutions with torches and pitchforks.

DEALING WITH LICENSES	
<i>Doing Business</i> Ranking 2009	142
<i>Doing Business</i> Ranking 2008	139
Procedures (number)	18
Duration (days)	220
Cost (% gross national income per capita)	1282.6

But not, it seems, in Ghana. The illness at issue—one that severely undermines Ghana's goal to achieve middle-income status over the next generation—is poor agricultural productivity. The victims are the near 60% of the population who derive a significant portion of their livelihoods from what they can produce on their small holdings. Even the winners on this table are not beyond reproach. In the case of rice, for example, the annual rate of productivity growth between 2001 and 2006 is 2.0%. Moreover, the average yield per hectare of 2.0 metric tons (MT) is less than half the world average yield of 4.1 MT/ha.³⁸

Comparisons with production zones in neighboring Sub-Saharan countries are no less unfavorable. In the Comoe-Leraba region of Burkina Faso, some 200 miles west northwest of Tamale, average yields per hectare

for rice, cassava, and maize are 6.5 MT, 45 MT, and 6.5 MT, respectively. These represent increases over average Ghanaian productivities by 325%, 370% and 430% respectively.

The proven therapeutic course of treatment includes a combination of high-yielding seeds and agricultural inputs—fertilizers and crop protection products—which have been found to be effective in restoring normal levels of productivity to agro-ecologies quite similar; and occasionally adjacent, to Ghana. The regulatory institutions involved in the pre-release testing process are numerous.

In the case of seed and planting materials, the lead institutions are the Crop Research Institute (CRI) in Kumasi, and the Savannah Agricultural Research Institute (SARI) in Tamale, 2 of the 13 research institutions that operate under the umbrella of the Council for Scientific and Industrial Research. The situation is paradoxical. On the one hand, Ghanaian agriculture is fortunate to be able to count on the scope and caliber of scientific expertise that these two institutes possess. On the other hand, it is unfortunate, and even counterproductive, to apply such talents to stifle innovation rather than inspire it. And yet the current regulations concerning

38 USDA/FAS, *Grain: World Markets and Trade* (January 2007).

YIELD PER HECTARE, SELECTED FOOD CROPS, 2001–2006 (MT/Ha)

Food Crop	2001	2002	2003	2004	2005	2006	% Change 2005/06
Cassava	12.3	12.3	12.7	12.4	12.8	12.2	-4.7%
Yam	12.3	13.0	11.9	12.5	13.0	13.2	1.5%
Cocoyam	6.4	6.6	6.5	6.4	6.6	6.4	-3.0%
Plantain	7.8	8.3	8.1	8.5	9.6	9.7	1.0%
Maize	1.3	1.5	1.6	1.6	1.6	1.5	-6.2%
Sorghum	0.9	0.8	1.0	1.0	1.0	1.0	0.0%
Millet	0.7	1.1	0.9	0.8	1.0	0.8	-20.0%
Rice (paddy)	2.2	2.3	2.0	2.0	1.9	2.0	5.3%

Source: Ghana Ministry of Food and Agriculture

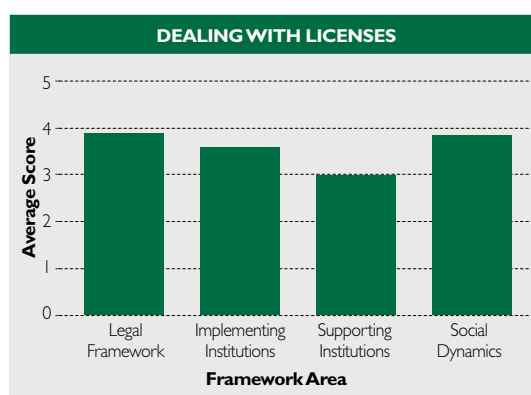
pre-release testing of seeds and planting materials, which both CRI and SARI must follow, are typically duplicative of demonstration trials that have already been completed elsewhere in the Tropics, and occasionally within the West African region itself.

In the case of fertilizer, the regulatory chain of command is somewhat confusing. There is no fertilizer law in Ghana. There is a draft law that was expected to be submitted for ratification in October 2008. In the meantime, as in years past, the Ministry of Food and Agriculture continues to license the import and distribution of fertilizers on the basis of an administrative decree. A 2005 study by the Food and Agriculture Organization of the United Nations noted that “Considerably more plant nutrients are being removed and lost than are being applied, with a consequent progressive impoverishment of soils. Traditional, soil exhausting cultivation practices are still used extensively... At about 5 kg per hectare of cultivated land, (fertilizer use) is at half the level of sub-Saharan Africa and at a quarter of the level of Africa as a whole.”³⁹

In the case of pesticides and other crop protection products (CPP), the Environmental Protection Agency (EPA) is vested with responsibility for registration of such products, and for licensing importers, distributors, and commercial applicators. Registrations of new brands of CPP—even products with the same active ingredients and with similar formulations to those that have already been registered and approved for distribution within the country—must be preceded by toxicology and bio-efficacy testing. Registration typically requires three years, although longer time lines are not infrequent.

This chapter discusses the role that licenses play in helping and hindering performance in the agribusiness arena. It focuses in particular on the processes for

obtaining clearances for new seeds and crop protection products, how these can serve as an obstacle to innovation, and how this paradox can be resolved in favor of the agricultural and agribusiness communities in Ghana.



As demonstrated in this section's graph, the AgCLIR indicator scores suggest that the area of Dealing with Licenses is beginning to reflect an interest in reform. A strengthened legal framework for seed and plants is beginning to take shape, and institutions are becoming increasingly adept at navigating the challenges before them. The social dynamics underlying Dealing with Licenses are somewhat promising, while the score for supporting institutions reflects both positive and negative findings.

LEGAL FRAMEWORK

Licenses play an important role in regulating business activity. They define which behaviors are acceptable and which are not. Licenses are often earned only after the license seeker has demonstrated his or her understanding of the rules of conduct that must be followed in order to carry out the licensed activity. Licenses also provide a means for regulatory and fiscal agents to track a sector's population, and determine whether all its participants are

³⁹ FAO, *Fertilizer Use by Crop in Ghana* (2005), at 13.

in compliance. Licenses also permit sanctions in the event of non-compliant behavior; licenses can be suspended or withdrawn in the event that their terms are violated by the license-holder. This permits governments and agencies to keep bad drivers off the road, usurious lenders out of the formal financial chain, and reckless pesticide applicators out of the field. Provided they do not unduly restrict access into a sector; and do not stifle innovation and investment by overregulation, licenses have a legitimate place in a country's regulatory system.

A number of licensing provisions under Ghanaian law and regulations have a direct impact on the agribusiness sector. These include licensing provisions for agrochemical importers and distributors and for commercial CPP applicators, as well as environmental impact assessments for agricultural projects involving more than 40 Ha or affecting more than 20 families. These provisions are logical and appear generally consistent with international best practices.

As for the provisions for securing releases for new varieties of seeds and planting materials and crop protection products, legal and regulatory provisions appear to go well beyond legitimate concern for guarding against the introduction of materials that risk damage to the population or the agro-ecology. Instead, they appear to add another series of bricks to the already overloaded pile that the research institutions must deal with, and to impede the introduction of technological advances that would do much to address the critical problem of unsustainable yields facing the Ghanaian farming community.

KEY LAWS

- Seed Inspection and Certification Decree, 1972 (NRCD 100)—**under revision**
- Pesticides Control and Management Act, 1996 (Act 528)
- Environmental Protection Agency Act, 1994 (Act 490)
- Free Zone Act, 1995 (Act 504)
- Export and Import Act, 1995 (Act 503)
- Prevention and Control of Pests and Diseases of Plants, 1965 (Act 307)—under revision
- Ministry of Food and Agriculture Administrative Decree on Fertilizers—**draft law to be submitted in 2008**
- CSIR Act, 1996 (Act 521)
- **Draft law:** Plant Quarantine Act

This is an especially turbulent period for seed and agrochemical legislation. Three new draft laws covering seeds and planting materials, plant protection and regulatory services, and fertilizers were all scheduled for introduction in the Parliament in October 2008. While full texts of these laws were not available in their entirety for review, it is reported that they will do much to remove unnecessary steps from the pre-release investigations such materials are subjected to, and to broaden the notion of regional reciprocity.

The draft seed law contains a number of provisions that would foster a more open, efficient and private-sector-oriented seed sector. These provisions include:

- A variety registration system that allows seed companies to conduct their own DUS/VCU (distinctiveness, uniformity, and stability/value for cultivation and use) testing and only have to provide the data to receive registration. This mechanism saves time and money for seed companies interested in evaluating and registering their own materials.
- A variety registration system that accepts the ECOWAS regional variety release agreement, whereby a variety released in one country, can now be marketed in all 17 countries. This implies that Ghana is not only a national market, but also is part of a regional market which becomes much more attractive to investors.
- A seed certification system that is non-mandatory, with the additional option of being accredited. This also opens the door for reduced costs for seed certification.
- A "truth-in-labeling" system that will remove from the market unlabeled seed, as well as non-compliant seed that deteriorates the image of high-quality seed and affects sales.
- Specific articles in the law (and regulations) that do not place any restrictive conditionality on the existing and potential private seed sector.
- Ample private sector participation in the National Seed Council for seed policy development and in the Technical Committee for advice on technical seed aspects that may impact the seed industry.

The draft seed law also removes the monopoly currently granted to the GLDB over production of foundation seed in Ghana. By enacting legislation that puts the focus on safeguarding human and environmental safety, while getting out of the business of testing for commercial viability, the logjam that has been created by current legislation will be effectively broken.

New emphasis on “truth in labeling” will bring an important change to Ghana’s licensing environment. In general, truth-in-labeling laws stipulate that a product contains what the label says it contains. Labels are required to provide an accurate description of the weight, volume, or count of the package contents; a description of the contents; and the name and address of the manufacturer. Tampering with labels is illegal.

In some countries, including the United States, the quality of goods (seeds, for example) is regulated through truth-in-labeling law, which allows companies to set their own standards and conduct their own tests. In such instances, companies are required to provide accurate information about the product on the label; in the case of seeds, such information includes the variety, germination rate, purity, etc.

At this time, food laws in Ghana include the Food and Drugs Law and the Amendment Act 523; District Assemblies Bylaws. These laws are implemented at central level by the Food and Drugs Board and at the local level by the District Assemblies. Constraints to implementation include manpower and resources for enforcement.

At this time, Ghana lacks a formal truth-in-labeling law; however, Ghanaian exporters routinely comply with truth-in-labeling requirements of destination countries. Ghanaian exports that must include accurate information on labels include organic cocoa, vitamins, honey, nutraceutical ingredients, and other products for export. Ghanaian importers do not bear the same burden of label accuracy. Hence, the efficacy of fertilizers, seeds, pesticides, and other imports is not enforced and consumer protection is generally not enforceable.

The draft seed law was prepared over a relatively short period by a limited number of people and, at the time of this diagnostic, there was very limited understanding about its implications among the constituencies that would be most affected by it, including the research institutes, seed producers, and farmers. Although some stakeholder training has begun, a clear plan for widespread implementation must be a MoFA priority, so that the new law can indeed result in a freer, stronger market for seed that ultimately raises the productivity of all types of Ghanaian farms. Truth in labeling will take considerable commitment and effort to implement.

IMPLEMENTING INSTITUTIONS

AGRICULTURAL CHEMICAL IMPORTER/ DISTRIBUTOR LICENSES.

The process for obtaining a license to import or distribute fertilizer begins with the purchase of an Application Form for Pesticide License (EPA-Schedule A1) at any EPA office. The applicant must then attend a two-week EPA training session, completion of which confers a certificate of competence. Applicants must then show evidence of adequate personal protection equipment (masks, gloves, fire extinguishers, and buckets filled with sand). Applicants then submit the completed EPA-Schedule A1 form to the local EPA office, following which an EPA staff member conducts an inspection of the premises where the agrochemicals will be stored and sold. If the inspection results are favorable, the dossier is then submitted to EPA headquarters for final approval. The time required to complete this process ranges from a minimum of four weeks to a maximum of eight weeks. Costs are 60 cedi for a warehouse, distributor, operator/applicator, or retailer; or 200 cedi for an importer.

Interviews with agrochemical dealers and importers left the impression that EPA oversight of the fertilizer trade is thorough, but fair and non-punitive in nature. EPA officials interviewed for this diagnostic indicated that they work hard to eliminate unlicensed dealers from the marketplace, while working equally hard to make sure that licensed dealers remain in compliance. Although they monitor licensees regularly, EPA representatives take pride in the fact that no license has ever been revoked and that no licensed business has been closed down for more than a few days.

ENVIRONMENTAL IMPACT ASSESSMENTS (EIAs).

Regulations call for EIAs in cases where project size exceeds 40 hectares, where 20 or more families are affected by the development, where cultivation involves irrigation or wetland use, or for aquaculture. This particular rule has reportedly deterred investments by some agricultural interests. The assessment process entails a site visit, consideration by a technical review committee, then submittal to EPA/Accra. In 75% of the submittals, approval is given and the permit is granted in 2–6 months; provisional operating permission is granted during this waiting period. In 20% of the cases, Accra stipulates revision to the project proposal, while 5

“Liberalization of licensing and permit practices in the introduction and release of new varieties and crop protection products will provide private sector formulators, importers, and dealers with the incentives they need in order to take responsibility for marketing their products in Ghana so as to accelerate rates of adoption”

percent of all projects are denied. Of the 600 EIA requests that EPA receives each year, only 10% involve agricultural projects. As in the case of dealer/importer licenses, procedures look to be clear, expeditious, and focused on assuring compliance.

PESTICIDE REGISTRATION.

The registration of new pesticides, even in cases where this involves a new trade name for a product whose active ingredients and formulation have already been registered, requires a *de novo* application. This begins with the purchase on the Application Form for Pesticide Registration (EPA-Form A). EPA-Form A requires information on the applicant, the product, its formulation features, trial data, and active ingredient information. Trials are to be conducted both in the product's country of origin and in Ghana. Once EPA-Form A has been completed and submitted, along with the non-refundable processing fee of US\$600, the internal review process within EPA can be expected to take 6–12 months, although delays are not uncommon. Given the need for field trials in Ghana prior to submittal of Form A (performed under a 12-month provisional clearance, at a cost of US\$600), the total time between initiation of trials and final approval for release can reportedly take 2–3 years on average, with some cases taking even longer. Once approved for release, the product is assessed a full registration fee of \$ 1,800 for a three-year period, with three-year renewals available thereafter for \$1,000.

KEY IMPLEMENTING INSTITUTIONS

- Environment Protection Agency (EPA)
- Plant Protection and Regulatory Services Directorate (MoFA)
- Crop Research Institute (CSIR)
- Savanna Agricultural Research Institute (CSIR)
- National Varietal Release Committee
- Ghana Grains and Legumes Development Board (GLDB)

Toxicology, plant residue characteristics, ecotoxicology, and environmental behavior—all components of the trial data—are legitimate questions that should be addressed prior to release of untested agrochemical materials. It is most unlikely, however, that any material would be proposed for introduction into Ghana that has not already undergone extensive introductory trials in one of the large foreign agricultural markets (such as the United States, EU, Japan, China, or India). The requirement for

separate local trials for such a small market as Ghana effectively serves as a barrier to entry and acts as a disincentive to the introduction of new agrochemicals into the Ghanaian agricultural economy. Manufacturers typically aim to trial their products in regions (ECOWAS, SADC, and Latin America) where reciprocity provides them with an opportunity to gain market access into multiple markets on the strength of a single regional trial. The system practiced in Ghana appears to preclude such an approach, thereby discouraging the introduction of modern agrochemical products that typically have less environmental impact than the products they are replacing. Thus, the Ghanaian system risks harm to the agricultural economy, without providing any positive protection for the Ghanaian environment.

IMPORT AND EXPORT PERMITS.

Permits for trading in agriculture goods are provided by Plant Protection and Regulatory Services (PPRS), a division of MoFA. The phytosanitary certificates signed by PPRS, as the plant protection authority in Ghana, are universally accepted by Ghana's overseas markets for agricultural products. Deficiencies recognized by PPRS in its plant protection function include a legal authority that was enacted over 40 years ago and has not been revised since then. This problem should be corrected with the adoption of the draft Plant Quarantine Law which will be presented to the legislature for approval later this year. PPRS is also responsible for the issuance of permits authorizing the import of live plants and perishable food products. With passage of this law, this permitting will be done in conformity with the rules of the International Plant Protection Convention, and will not be a barrier to efficient operation of the import/export sector.

INTRODUCTION OF SEED AND PLANTING MATERIALS.

Throughout this diagnostic, seed certification was described as a long and arduous process, requiring that new varieties be tested within Ghana at the breeder, foundation, and certified seed stages. Although trials may have been conducted in the West African region, current legislation provides for no reciprocal trial recognition. The three stages of production must be field-tested in Ghana, under the supervision of SARI or CRI, before the product can be released.

In addition to three years of agronomic testing to which each new variety must be subjected, current regulations require that sensory evaluation standards must be met before the variety can be released. In the case of

varieties being grown for human consumption, the sensory evaluation is conducted by a consumer panel, which is queried on how they like the flavor of the new variety. In the case of feed crops, the variety is fed to the target animal population, and the animals are then weighed and observed in an attempt to measure the impact of the new variety. According to researchers at CRI, fully 50% of new seed varieties fail to pass this sensory stage of the clearance process, which results in the seed being denied release in Ghana.

Insistence on such a strenuous and quasi-scientific set of performance standards would be daunting for a breeder in his efforts to gain access to any country in the world. For a country like Ghana, representing a fairly small market made even smaller by the fact that 80% of all seed planted is believed to originate as "saved seed" held over from the previous year's crop, such an array of hurdles leads most breeders to pass on the opportunities of Ghana and pursue distribution in countries that pose fewer obstacles to entry. For those few hardy souls who decide to brave the Ghanaian gauntlet, there does not appear to be much energy left to engage in the sort of demonstration plot and private sector extension work which is usually required for the successful launch of a new variety.

It is reported that the new seed law, to be presented to the legislature during its upcoming session, foreshortens this protracted introduction process, and even allows for reciprocal trials recognition with other ECOWAS members. Once a new seed law is enacted, it is believed that major breeder companies from South Africa and the United States will energize their distribution efforts in Ghana, and embark on the types of marketing programs that will serve to increase both productivity and farmer incomes. Some estimates predict a fourfold increase in maize productivity on the basis of new seed alone. Freeing up market access for twenty-first-century varieties is critical to achieving the sort of agricultural modernization that the government of Ghana has identified as a principal goal of its Growth and Poverty Reduction Strategy (GPRS II).

If the two new bills become law, many implementation issues will need to be addressed, encompassing licensing and certification. Among the necessary steps following enactment of the Seed Law would be:

- Implementing quality control systems (truth-in-labeling, non-mandatory seed certification, and accreditation of non-government bodies for quality control delegation)

- Obtaining accreditation for the seed certification system
- Training seed inspectors in seed sampling and testing procedures in accordance with the International Seed Testing Association (ISTA) rules
- Establishing one of the PPRSD seed laboratories as the Official Seed Testing Laboratory, including equipping the laboratory and training staff to meet International Organization for Standardization (ISO) certification standards
- Raising stakeholder awareness and educate the private sector; potential foreign interests, and farmers on the relationship of the new law to their interests.

Among the necessary steps following enactment of the Plant Quarantine Law would be:

- Establishing regulations for the containment and eradication of plant pests
- Prescribing procedures related to the movement and handling of plants and plant products
- Providing that regulations are based on the best available scientific knowledge
- Training MoFA staff to implement this legal framework, to investigate complaints and objections, and to maintain transparent records.

SUPPORTING INSTITUTIONS

GHANA AGRI-INPUTS DEALERS ASSOCIATION (GAIDA).

GAIDA is the trade association that groups together the agro-input dealers in Ghana. GAIDA represents its members in communications with the licensing authorities, and articulates the sector's attitudes toward existing and pending legislation and regulations. It is considered by its members to be an effective advocate for the sector and is well respected by the implementing institutions involved in the licensing process. In addition to its advocacy function, GAIDA can play the role of "sheriff" when called upon. In 2007, GAIDA, with donor support, "initiated action toward arresting a growing practice of counterfeiting, misbranding, adulteration and mislabeling of pesticides by unscrupulous and cheating dealers in Ghana."⁴⁰

SEED PRODUCERS ASSOCIATION OF GHANA (SPAG).

This organization represents at least 225 growers of certified seed throughout the country. The association works to address a number of the principal challenges its

⁴⁰ Business Sector Advocacy Challenge Fund website, www.busac.org.

members face. In addition to the very low usage of certified seed by the production sector, seed producers are hampered by the tight control exercised by the **Grains and Legumes Development Board (GLDB)** which, according to the Seed Act of 1972, is the only agency in the country authorized to produce breeder seed. Under this system, GLDB is free to grow out whatever varieties of breeder seed it chooses, thereby forcing SPAG members to offer the certified version of those varieties, whether or not the varieties are preferred by the farmers who are their customers. Just this year, for example, GLDB failed to provide any of the soya, cow pea, or rice varieties that are preferred by farmers and consumers in the northern region. As a result, SPAG's Tamale members were forced to supply their customers with a product the customers did not want. SPAG is also working with MoFA and financial institutions so that they in turn encourage the use of certified seed by the farmers who attend MoFA's extension classes and who borrow money from the banks.

PRIVATE CONSULTANTS.

Larger companies are required to submit environmental impact assessments and management plans annually to the Environmental Protection Agency in Accra. This represents an additional burden for all companies that are not located in or near Accra, which defines most agribusiness activities in the country. A cadre of private consultants has emerged whose core business consists in designing, submitting, and securing EPA approval for these EIAs and management plans. One report indicated that the consultants provide excellent service in securing the necessary approvals, although—at US\$5,000 per year—their services do not come cheap.

KEY SUPPORTING INSTITUTIONS

- Ghana Agri-Inputs Dealers Association
- Seed Producers Association of Ghana
- Commodity Associations
- Private sector consultants
- Donors

DONORS.

Mention has already been made of the fact that more than 70% of all seed used in Ghana in any given year is thought to originate either as "saved seed" from the prior year's crop or through informal channels (which usually means someone else's "saved seed," cleaned and repackaged as though it were certified). Of the 25–30%

of agricultural production that is grown from authentic certified seed, 50% of that seed is reportedly purchased by NGOs and distributed to farmers connected to their projects. This leads to the rather discouraging conclusion that the current market for certified seed represents only 12–15% of seed stock purchased directly by farmers.

CNFA's West African Seed Alliance (WASA) project has provided important assistance to MoFA in the drafting of the new Seed Law, as have MiDA and the Alliance for the Green Revolution in Africa (AGRA), an organization that supports key aspects of the African agricultural "value chain"—from seeds, soil health, and water to markets and agricultural education. The passage of this new legislation will, in the opinion of WASA, provide sufficient incentive for major seed breeders and distributors (such as Panar of South Africa and Pioneer of the United States) to embark on trials and marketing efforts in Ghana. The introduction of hybrid maize seed by such companies into Ghana should permit a quadrupling in Ghana's maize yields, from its current 1.5 MT/ha up to levels of 6.0 MT/ha.

In addition to their role as primary customer for SPAG's production, donors and NGOs are quite active in organizing agrodealers, training them both in proper handling of their products and in proper business management practices

SOCIAL DYNAMICS

The agricultural economy is badly in need of innovation and modern production techniques. Maintenance of licensing practices to ensure that agrochemicals are safely stored and administered can only help the sector. Liberalization of licensing and permit practices in the introduction and release of new varieties and crop protection products will provide private sector formulators, importers, and dealers with the incentives they need in order to take responsibility for marketing their products in Ghana so as to accelerate rates of adoption. Best of all, liberalization will free up scarce research resources for work on other avenues toward increased productivity. Such reforms promise a price tag that promises to be less under the new system than it has been under the old.

Still, there is a real danger that the principal obstacle to the adoption of new technologies—grower reluctance—will remain essentially unaffected by any of the measures discussed here. In Ghana, as in many countries where subsistence is the predominant agricultural tradition, the notion of "spending money to make money" has little parlance. Farmers in Ghana appear to

be far more concerned with lowering risks and up-front costs than in increasing today's expenditures to improve tomorrow's revenues.

It is one thing to know, based on experiences in many locations around the world, that maize production can be raised from Ghana's average of 1.5 MT/ha up to 6.0 MT/ha, simply by a judicious mix of high-yielding hybrid seed and a specific blend of fertilizers and crop protection products. It is quite another to take that knowledge and transmit it to the subsistence farming sector in Ghana in such a way that the sector adopts the "higher yields" mantra as its own. For however long the farmer relies on a cost-minimization model for his or her "business," all the proposed improvements in the agribusiness licensing system in Ghana will have only a limited effect in the capture of improved income through improved yields. The extensive MiDA farmer business training programs are directed at achieving a breakthrough in this problem. Other breakthroughs will surely be needed before this problem is overcome.

RECOMMENDATIONS

- Consider the impact on agricultural productivity of all license requirements in the agricultural and agribusiness sector. Where the impact on productivity is negative, consider modification or elimination of the requirements.
- Revisit all licensing regulations governing crop protection products to ensure that they are limited to legitimate scientific, technical, and environmental considerations only.
- Expedite approvals for all CPP whose formulations, under different trade names, have already been approved for use within Ghana.
- Secure the ratification and enactment of the draft Seed Law and the Plant Quarantine Law, as well as the regulations that will accompany their implementation, as important weapons in the attack against Ghana's agricultural productivity problems. Develop a comprehensive plan for implementation of the new laws, so that their practical effects can efficiently enter the marketplace and strengthen commerce in the agriculture arena.
- Take special care with the proposed Fertilizer Act to avoid unnecessary restrictions or encumbrances on the efficient importation and distribution of nutrient materials by the private sector.
- Relieve Ghana's agricultural research institutions of the burdensome and unremunerated tasks of field-testing every new seed variety prior to release.
- Consider exemptions for CRI and SARI from the 30% self-funding requirements, in order to free them both to move more vigorously in attacking Ghana's productivity problems.
- Develop capacity-building programs for GAIDA and SPAG in order to strengthen their ability to assume leadership in the private sector takeover of responsibilities in the seed production and inputs handling and distribution.
- Work with FBOs on methods to facilitate and accelerate the adoption of productivity enhancements into the agricultural value chain.



EMPLOYING WORKERS

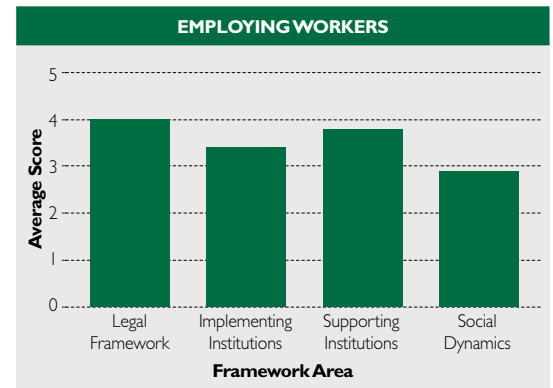
Of the 10 areas ranked by the World Bank’s *Doing Business* initiative, Ghana’s lowest rank is in the area of Employing Workers. Its ranking of 145th falls in the lowest quintile of those countries assessed, signaling that the country’s labor and employment policies are among the least business-friendly in the world.⁴¹ Rigid restrictions on worker hiring, firing, wages, and hours discourage companies from taking on more workers through formal employment.

EMPLOYING WORKERS	
<i>Doing Business</i> Ranking 2009	145
<i>Doing Business</i> Ranking 2008	144
Difficulty of hiring index	22
Rigidity of hours index	40
Difficulty of firing index	50
Rigidity of employment index	37
Firing costs (weeks of wages)	178

The World Bank’s ranking is a key piece of data with respect to understanding the environment for employing workers in Ghana, but, for the purpose of understanding employment in Ghana’s agricultural sector, it reveals only a small part of the story. Namely, *Doing Business* focuses on the law as it applies to medium-to-large-scale, formally established enterprises located in urban and peri-urban areas. This fact misses the majority of the country’s workers who toil in rural areas and on a smaller and less-sophisticated scale. These are the farming families who hold small plots—often leased from tribal authorities and worked by highly isolated, poorly educated people using the most primitive of resources. On these small plots, workers typically grow food for their own consumption, for cash at the local marketplace, and, in some cases, for sale to commercial enterprises, such as local nut or fruit-processing companies. Most individuals are not employed in the traditional sense that they are formally “hired” by a registered company and are entitled to all benefits, including a minimum wage and Social Security. Rather, they work casually for themselves and their families and, periodically, for others. They may have some allegiance to an FBO in which other members produce the same items, but, as discussed elsewhere in this report, FBOs often go unregistered or underused.

Roughly 90% of Ghana’s farm holdings are less than two acres in size. Considering that nearly two-thirds of Ghanaian households receive some income from agricultural activity, the *Doing Business* diagnosis of the environment for employing workers largely overlooks this level of enterprise.

Ghana’s high degree of informality also complicates the task of assessing the influence of labor and employment policies in the agriculture sector and on the economy as a whole. In Ghana, 88% of the working population is occupied in the informal sector.⁴² In rural areas, this number climbs to well over 90%. Thus, referring to “employment” in traditional terms is quite difficult.



This chapter aims to bring to light certain issues pertaining to agriculture workers who are often overlooked and therefore do not find their way into the promulgation of public policy. Significantly, Ghana has reduced its poverty rate from roughly 51.7% in 1991–1992 to 28.5% as of 2005–2006. Ghana is poised to reach the Millennium Development Goal of 25.8% well ahead of schedule in 2015.⁴³ These are remarkable achievements that place Ghana as an important model for all of West Africa. These improvements are not, however, uniform by sector or by region (and the two

41 See generally World Bank, *Doing Business 2009* (2008), and accompanying literature, available at www.DoingBusiness.org.

42 World Bank, *Ghana: Meeting the Challenge of Accelerated and Shared Growth* (Report No. 40934, November 28, 2007) (hereinafter *Meeting the Challenge of Accelerated and Shared Growth*).

43 Id. at 84.

tend to go hand in hand.) Specifically, as of 2005–2006, while the poverty rate everywhere else in Ghana had dropped to 20%, the poverty rate in the rural northern zone was 62.7%. Thus, although overall poverty in Ghana is decreasing, the pace of poverty reduction in the northern regions, where agriculture is the principal source of employment, has been much weaker:

Furthermore, the agriculture sector as whole produces an average income far below the other sectors. In terms of average annual earnings, as of 2006, Ghana’s agricultural sector brought in the lowest average annual earnings, just over half of those of the next-lowest sector, manufacturing.⁴⁴ Thus, while Ghana’s overall economy may be improving, the conditions for those working in agribusiness, particularly in the north, are an entirely different matter:

In its *Doing Business* analysis of Employing Workers, the World Bank establishes three types of employment: wage and salary workers, individual self-employed workers, and household enterprise workers. These distinctions among workers are useful, given that over 80% of work in Ghana’s rural areas is self-employment or household enterprise work.⁴⁵ As might be expected, poverty is highest among these two groups. Since farming is conducive to self-owned and family-operated enterprise, and these types of enterprises are at a high risk for sustained poverty, one of the key objectives for improving the quality of life of those engaged in agriculture is to enable small farming operations with the resources needed to break through the poverty barrier and prosper:

This diagnostic found a number of opportunities to improve the standard of living for those engaged in agriculture production or processing. For example, Ghana has a large number and variety of FBOs—that is, collective enterprises organized as cooperatives, associations, or even limited liability companies. These entities are crucial in overcoming the barriers of information and access inherent to the small, family-operated, subsistence-level enterprises that typify the agribusiness industry. Although many FBOs exist in Ghana, many more are needed and their capabilities need to be expanded. At their most basic level, FBOs can provide a conduit for the transfer of knowledge to the farmers from the marketplace. At their full potential, FBOs can do much more, providing advanced farming techniques, attracting extension services, functioning as an organization capable of attracting credit, negotiating

contracts with producers, as well as providing several other important services that would allow farmers to achieve the otherwise-impossible economies of scale. Strengthening this key institution would bolster both the environment for doing business in Ghana NS the overall well-being of agricultural workers.

WORKPLACE PROFILE	
Population	23.38 million
Labor force	11.3 million
Approximate number of employees formally employed (based on estimates of workforce formality) (2007)	1.36 million
Percentage of workforce employed in agricultural sector (2005)	56
Percentage of workforce employed in industry and services (2005)	15—industry 29—services
Unemployment rate	
Literacy (2000): Male	66.4%
Literacy (2000): Female	49.8%

In addition, a major shortcoming identified during this diagnostic was the quality of Ghana’s agriculture extension services and information dissemination. Without proper mechanisms in place to communicate in an efficient manner the many opportunities that are available in agriculture, poverty and low productivity will likely persist far into the future.

The AgCLIR indicator scores for Employing Workers show relative strength in the areas of legal framework and supporting institutions, as indicated by the graph set forth in this section. There is considerable room, however, for continued reform. The scores illustrate this chapter’s central points that social dynamics underlying Employing Workers—namely, the seasonal nature and tenuousness of agricultural employment—and implementing institutions need continuous and constructive attention.

LEGAL FRAMEWORK

BASIC HUMAN RIGHTS.

Under Chapter 5 of Ghana’s **Constitution of 1992**, the basic rights for workers broadly include freedom of association, the right to organize and engage in collective bargaining, the prohibition against forced labor and slavery, and equality of opportunity and treatment. Thus, Ghana’s constitution meets certain fundamental concerns the country confronts in the

⁴⁴ Id.

⁴⁵ Id. at 88.

negotiation of international trade agreements and procurement of international assistance. Freedom House considers Ghana to be “free,” an important designation that has not been earned by several of its African neighbors.⁴⁶

Discussions in many international forums often go beyond basic rights to focus on other labor standards and regulations applied as well. The sensitivities of consumers in developed countries to working conditions in developing countries have also been raised through the concerted action of human rights NGOs.

Agricultural enterprises that engage in global trade are typically aware of the impact that workers' conditions have on their markets. For example, stories in the late 1990s of chocolate produced from cocoa harvested by child labor and forced or “slave” labor were immediately perceived as a threat to the multibillion-dollar chocolate market. Large companies such as Mars and Hershey took action quickly to assure that all participants in the cocoa supply chain realized the importance of such labor practices on their long-term economic interests. Supplier countries such as Ghana followed up with actions intended to lead to enforcement of child labor laws and to eliminate the worst forms of child labor. In 1998, Ghana passed the **Children's Act** “to reform and consolidate the law relating to children, to provide for the rights of the child, maintenance and adoption, regulate child labour and apprenticeship, for ancillary matters concerning children generally and to provide for related matters.” With this statute, the government of Ghana acknowledged that there were norms of behavior towards children that needed to be reversed and standards of treatment that needed to be articulated. The Labour Act of 2003 enshrined these rights further; as did the elevation of the issues relating to women and children to the ministerial level, by creation of the Ministry of Woman and Children (MOWAC) in 2001.

Workers' rights are also part of the broader global movement toward “fair trade” standards. As agribusinesses in developing countries seek access to global markets, such business and trading standards achieve the same relevance as local laws regarding workers' rights.

THE LABOUR ACT OF 2003.

Ghana's chief statute pertaining to labor and employment makes note of leave, conditions of termination of employment, maximum hours of work, overtime, commencement of work, holidays, and rest periods for all workers. The Labour Act contains a

section dedicated to the special treatment of temporary and casual workers, although the law makes no mentioning of the word “migrant.” The inclusion of this provision is highly significant to agriculture workers, who are often employed under seasonal or relatively informal circumstances.

A “casual worker,” as defined in the law, is someone employed on a day-to-day basis. Termination is acceptable at any point, provided that person's wages for the day/week are paid in full. The contract of a casual worker need not be in writing.

KEY LAWS

- Constitution (1992)
- Labour Act (2003)
- Co-operative Societies Decree (1968)
- Factories, Offices, and Shops Act (1970)
- Free Zone Act (1995)
- Immigration Act (2000)
- Protection Against Unfair Competition Act (2000)
- National Labour Commission Regulations (2006)
- Labour Regulations (2007)
- Ghana Education Reform (2007)
- ECOWAS Protocol A/P.1/5/79 (1979) Relating to Free Movement of Persons, Residence and Establishment
- The Children's Act (1998)

Employment up to but not surpassing six months in a year can be considered “temporary.” Only those working for more than six months in a year are entitled to a contract and provisions as a “permanent” worker. Pursuant to the Labour Act: “Without prejudice to the terms and conditions of employment mutually agreed to by the parties, the provisions of this Act in respect of minimum wage, hours of work, rest period, paid public holidays, night work and sick leave are applicable to a contract of employment with a temporary worker.”

This status creates a huge loophole for employers that, if the percentage of the labor force engaged in informal labor is any indicator, seems to be exploited fully. With agriculture tending to be a seasonal industry, it is quite possible that a farm owner, or farm product producer, would only need labor in short increments. In such instances, all the rights of a permanent worker are “applicable to a contract of employment.” The employer need not put such employees on his books, nor pay any benefits or make any contributions to Social Security on

⁴⁶ Freedom House, *Freedom in the World* (January 2008). Freedom House's two other classifications, based on political rights and civil liberties, are “partially free” and “not free.”

their behalf. Observations of various small-scale enterprises, such as poultry businesses that have slaughtering operations on a six- or seven-week schedule, indicated that enterprises indeed treat their casual labor very casually.

The Labour Act does make clear that all laborers have the right to associate as they please and cannot be discriminated against based on any union participation.

COOPERATIVES AND FBOs.

A cooperative refers in this report to any type of organization formed for the purpose of collectively processing or marketing agriculture products. In Ghana, an FBO can be organized as a cooperative, a company, or a non-profit organization.⁴⁷ In general, cooperatives and FBOs are businesses that are owned and controlled by the farmers who use its services. *Supply cooperatives* supply their members with inputs for agriculture production, including seeds, fertilizers, fuel, and machinery services. *Marketing cooperatives* are established by farmers to undertake transformation, packaging, distribution, and marketing of farm products (both crop and livestock).⁴⁸ Services received and earnings allocations are shared by the cooperative/FBO members on the basis of use.

In Ghana, as in many African countries, the history of cooperatives discourages confidence in this model as a promising investment opportunity for small producers. Beginning with the use of cooperatives as a mechanism for serving colonial powers, followed by a mid-twentieth-century norm of strict government control over cooperatives, the model engenders very little trust. There has been scarce progress in the development of a new cooperative law to replace a **1968 decree governing agriculture cooperatives** in Ghana. A 2001 draft law was reportedly rebuked by the World Bank, due to a continued emphasis on government control over cooperatives, and little appears to have come from a donor-supported initiative in 2003 to draft a new law.⁴⁹

In fact, a modern cooperative law is not essential for service and marketing cooperatives to be established and to function as they should. Nor is the existence of a cooperative law, in itself, sufficient for cooperatives to prosper.⁵⁰ Agriculture cooperatives can function where there is a sound law of contract and a viable system of dispute resolution, as well as a healthy respect for the rule of law. In Ghana, cooperatives need not formally register with the government to function. If they do wish

to enter the formal sector (and thereby access the many advantages of doing so, including limited liability and access to finance), they can register as companies with the Registrar General's Office or identify themselves as cooperatives to the Department of Cooperatives under the Ministry of Manpower Development and Employment. Most important, cooperatives and FBOs require an atmosphere of trust, bolstered by formal tools of accountability, which do not yet exist to a sufficient degree among Ghana's smaller producers. The general failure of the cooperative/FBO model to date means that agriculture workers are substantially disadvantaged by missed opportunities in productivity, enhanced knowledge, and diversification.

IMMIGRATION ACT.

Informal movement of migrant labor is part of the culture of West Africa. There are many tribes and communities along the borders of Ghana whose people spread on either side. They lived in these areas long before the borders of Ghana were drawn. Regulation of the cross-border movement of these peoples is exceedingly difficult for Immigration Services to handle. That said, this type of movement is not believed to be particularly disruptive to the Ghanaian economy.

With regard to more systematized migration of laborers from other countries, formal movement of people is guaranteed by ECOWAS protocol. Immigrants from an ECOWAS-member nation are granted 90 days to stay within Ghana so long as they can provide some guarantee that they have work. Verifying this is quite difficult, and as a result, immigrants are allowed to enter rather easily.

Obviously, regulation, and, at the very least, accurate record keeping are still needed. Border security is something Ghana is currently struggling with, a matter that is receiving heightened attention with oil scheduled to pump in 2010.

According to the **Immigration Act** (2000), foreign-owned enterprises may employ foreign workers in keeping with a quota system outlined in the Labour Act. Namely, "a person shall not employ any foreign national in Ghana except in accordance with a permit granted by the Immigrant Quota Committee." The law does not make clear how exactly the quota functions. Apparently, this is left up to the discretion of the committee. In actuality, a firm can hire a certain number of foreign nationals in proportion to the amount that company has invested in Ghana.

47 MoFA, *Operating Guidelines for the FBO Development Fund and Extension Development Fund* (2005), at 11.

48 Farmers may also rely on credit cooperatives as a source of financing for both working capital and investments.

49 See National Cooperative Business Association, *Building Better Co-op Law* (June 2003).

50 Henry Hagen, *The Creation of a Supportive Environment in Theory and Practice: Cooperative Law. Is it Necessary; Is it Sufficient for Cooperatives to Prosper?* (June 2002).

The ambiguity of the quota system leaves significant room for interpretation. Furthermore, in the event that a need for a particular type of expertise is made apparent, the process involved for registering a foreign national can be streamlined. Despite these ambiguities, foreign nationals who enter in this fashion are kept track of with permits that have to be regularly updated by the employer, and the employer has to provide some guarantees that there will be a “transfer of knowledge” upon completion of the foreign national’s time in Ghana.

There is a commonly held belief by many Ghanaians, as in many other countries throughout the world, that foreign migrants, and specifically Nigerians, are responsible for many of the problems—crime, employment, urban slums, etc.—that plague Ghana. In fact, the magnitude of foreign contribution to these problems is overestimated and masks what is a really a political problem more than it is an enforcement problem. Ghana has signed the ECOWAS protocol and, like every other country, must live up to the obligations this entails.

Job creation is the bigger issue, but in all the noise about immigration, the matter often goes unaddressed. In the course of conducting this diagnostic, the gap in technical know-how that exists in Ghana was widely reported. These technical positions are often being filled by Chinese and Indians. Although this often takes place illegally, if the skills these immigrants provide were more easily identifiable in the Ghanaian workforce, the need for such immigrants would not be as strong and enforcement would be easier for Immigration Services. With regard to agriculture specifically, a number of different interviewees all downplayed the extent to which foreign migrants are involved in the sector.

Despite the fact there are a number of laws regarding labor rights, nearly every lawyer interviewed acknowledged that the majority of farm laborers are ignorant of these laws. Furthermore, most workers in the sector do not have access to these laws. For non-English-speaking workers, these laws are not available in their local languages.⁵¹

FREE ZONES.

The **Ghana Free Zones Act of 1995** was enacted to promote processing and manufacturing of goods through the establishment of export processing zones (EPZs) and encourage the development of commercial and service activities at seaport and airport areas. The statute provides that laws relating to importation and exportation of goods and services other than consumer goods for commercial purposes do not apply to

goods brought directly from outside Ghana into a free zone or goods exported from a free zone to a country outside Ghana. Imports by a free zone developer, subcontractor, or enterprise into a free zone are similarly exempt from indirect taxes and duties.

The Free Zones Act provides certain advantages that are not available to all investors, including unrestricted work and residence permits to EPZ investors and employees. Investors seeking to take advantage of the Free Zones Act may set up business in one of three export processing zones—at Tema, Ashanti, or Secondi—or they may independently apply for “free zone” status. As confirmed by the operator of at least one agriculture processing plant visited during this diagnostic, the opportunity to function as a free zone is an attractive option to processors located in rural parts of the country.

IMPLEMENTING INSTITUTIONS

MINISTRY OF MANPOWER, YOUTH, AND EMPLOYMENT.

The Ministry of Manpower, Youth and Employment (MOMYE) is the state agency formally responsible for registering employment seekers in the country. As part of its mandate, the MOMYE has established employment centers throughout the country. To date, there is a total of 62 employment centers throughout the country, serving 138 districts.⁵² This dispersal suggests some areas must be going underserved and indeed, workers in remote rural areas, where the need for employment services is most acute, have very limited access if any at all. Furthermore, as pointed out in a recent study from Ghana’s Kwame Nkrumah University of Science and Technology (KNUST), “Statistics from the Employment and Statistics Unit of the MOMYE indicate that many people do not go to these centers in search of employment because only a negligible proportion of those who register are able to obtain job placement. For example, of the 59,804 job seekers who registered with the Employment Centers between January and March 2000, only 2.8% could get placement.”⁵³

Also under the purview of the MOMYE is the **National Youth Employment Program (NYEP)**. Established in 2006, the NYEP is designed to address the growing problem Ghana is facing with youth (ages 15–24) unemployment. The supply of labor entering the workforce each year is outstripping the rate of growth of the economy as a whole. Although government

51 While English is the official language of the country, the government of Ghana/National Commission on Culture recognizes 11 languages and estimates put the number of languages spoken within the country at roughly 80.

52 Imoro Braimah & Rudith S. King, *Reducing the Vulnerability of the Youth in Terms of Employment in Ghana through the ICT Sector*, International Journal of Education and Development Using Information and Communication Technology, (IJEDICT), 2006, Vol. 2, Issue 3, at 23–32 (hereinafter *Reducing the Vulnerability of the Youth*).

53 Id.

THE SAVANNAH FARMERS MARKETING COMPANY (SFMC), established in 2005, is a private company owned by a farmers' cooperative. The founders felt that the organizations responsible for supporting farmers' access to markets needed to be farmer based themselves. The SFMC provides services to the impoverished northern region, helping farmers market their crops through extension services to improve their yields.

The SFMC began with 2,800 individual farmers and currently supports 9,500, organized into cooperatives of 10–15, with a goal of servicing 12,000 farmers by 2010. To form a cooperative and receive support from the SFMC, farmers must meet all the requirements established by the Department of Cooperatives *plus* demonstrate practicability, responsibility, and the ability to work as a group. The SFMC provides assistance with purchasing inputs and equipment and, most important, provides a guaranteed market upon harvest. All farmers are paid directly into their banks accounts.

efforts like these are well intentioned and appreciated, the extent to which they are actually solving the problem of absorbing the country's youth into the private sector workforce is unclear. With regard to agriculture in particular, in numerous interviews it was reported, and the statistics all show, that the youth are leaving the sector. Given the opportunities that abound in agricultural enterprise, especially in today's climate of high food prices, were the proper resources dedicated to develop the sector, young people in Ghana might view a career in the sector as a worthy pursuit.

Ghana's **Technical and Vocational Education and Training** (TVET) institutes and programs are a worthy pursuit aimed at filling the gap in technical know-how described before and developing the domestic labor force. Out of a total of 440 public and private TVET programs though, only 3 are agriculture-intensive.⁵⁴ Several discussions on this topic made clear that the resources dedicated by the government are not nearly sufficient to allow TVET programs the breadth and depth needed for them to truly influence the workforce. In addition to ongoing efforts to reform formal education in Ghana, specifically with regard to higher education, the TVET institutes and programs need to receive more attention and resources.

MINISTRY OF WOMEN AND CHILDREN'S AFFAIRS.

As has been stated elsewhere, over 60% of Ghana's total population is engaged in agriculture in some fashion. Of that 60%, four-fifths are women. Established in 2001, the **Ministry of Women and Children's Affairs** has as its mandate "achieving equal status for women, enforcing the rights of children and women, and promoting the survival, development, protection and increased participation of both women and children in the development process."⁵⁵

This institution's existence is encouraging in light of Ghana's often troubling record on child labor, as previously mentioned. Although the Labour Act and the Children's Act specifically detail the work children can and cannot do, several reports indicate that Ghana still struggles to eradicate this problem. A recent study conducted by the International Labour Organization (ILO) indicates that 25.6% of children in the rural areas are engaged in child labor. Only two-thirds of these children are still in school, and this problem is particularly pronounced in the agricultural sector, which accounts for 54.9% of all child labor in the country.⁵⁶

MINISTRY OF FARMING AND AGRICULTURE (MOFA).

In 2007, MOFA summarized the constraints to agriculture as follows:

1. An aging farmer population, yet the sector is unable to attract the country's youth
2. High illiteracy among farmers, affecting their ability to adopt and use new technology
3. High incidence of poverty among producers
4. About 70% of the total land surface prone to severe erosion
5. Limited knowledge in post-harvest management, particularly of perishable produce, which has resulted in post-harvest losses of about 20–50% for fruits, vegetables, roots, and tubers, and about 20–30% for cereals and legumes
6. Poor road and transport infrastructure
7. Lack of marketing skills, inadequate product development, and generally weak commodity value chains
8. Less than 1% of arable land under irrigation and the management of existing systems further limits their effectiveness
9. Lack of credit.⁵⁷

⁵⁴ Ministry of Education, Science and Sports, *Education Management Information System* (2006).

⁵⁵ Ministry of Women and Children's Affairs website, available at <http://www.mowacghana.net/>.

⁵⁶ Ghana: *Monitoring the Situation of Children, Women, and Men, Multiple Indicator Cluster Survey (MICS) 2006*, available at http://www.childinfo.org/files/MICS3_Ghana_FinalReport_2006.pdf.

⁵⁷ *Meeting the Challenge of Accelerated and Shared Growth*, *supra* note 42, at 133.

KEY IMPLEMENTING INSTITUTIONS

- Ministry of Manpower, Youth, and Employment (MMYE)
- Ministry of Women and Children's Affairs (MoWAC)
- Ministry of Foods & Agriculture (MoFA)
- Ministry of Education, Science, & Sports (MoESS)
- Social Security and National Insurance Trust (SSNIT)

Of these nine issues, five deal with issues specific to employment and education, an important development indicator for the efficiency/productivity of employment.

While it is encouraging that MoFA recognizes these issues, the agency must take a more aggressive and collaborative approach to tackling these issues. Specifically, MoFA's extension services need to be improved. Over the course of this diagnostic, it was reported that the appropriate technology and know-how have not been reaching farmers in a timely, efficient fashion. Although MoFA's extension services are seen by some farmers as adequate to their needs, they are criticized by many others as "inadequate," of "low quality," and "not up on recent technology."

SOCIAL SECURITY AND NATIONAL INSURANCE TRUST (SSNIT).

Ghana's Social Security service, SSNIT, is financed through employer and employee contributions of 12.5% and 5% of basic salaries, respectively. Individuals who are self-employed—including most farmers and agriculture workers—can choose to join at a rate of 17.5% of their declared income. Pension benefits are paid monthly and are earnings related, based on a formula prescribed in the law governing the scheme.

An SSNIT member needs to have contributed to the scheme for at least 20 years to qualify for a normal pension. Ghana's retirement age is 60 and pensioners are covered for old age, disability ("invalidity"), and survivor's lump-sum benefit in the event of death.

Membership is open to all workers though the military, police, and other security services have their own pension schemes and as such are exempted from the SSNIT scheme.

Employers are under "strict obligations" to register all workers and deduct and pay contributions on their behalf. It is the employer's responsibility to notify the SSNIT of change of labor force, location, status, or cessation of operations. In practice, the casual or

temporary nature of most agricultural jobs means that most agricultural workers do not benefit at all from this plan for social protection.

SUPPORTING INSTITUTIONS

NATIONAL LABOR COMMISSION (NLC).

The NLC was established by the Labour Act in 2003 to provide a mediation mechanism in the case of labor disputes. Its website, available at www.nlcghana.org, is substantive and well maintained. The site has the Labour Act and all NLC regulations posted and easily accessible. There is also a list of mediators on the website.

While the structure of the institution is encouraging, the NLC has received zero complaints in the last four years from the agricultural sector. As one General Agriculture Workers Union (GAWU) member put it, "the National Labor Commission and the Labor Act are biased against small farmers." This perception is one that the NLC should take seriously.

KEY SUPPORTING INSTITUTIONS

- National Labor Commission
- Unions
- Ministry of Education, Science, and Sports

UNIONS.

The GAWU is the largest functioning union specifically dedicated to agriculture. Current estimates put union membership at 22,000 wage-earning employees and 25,000 small farmers. The GAWU aspires for all wage earners to receive:

- security of employment
- safe work conditions
- termination benefits

Through the union, small farmers are promised:

- training that is relevant to their work
- education on bookkeeping and price negotiation.

As one of its principal goals, the GAWU aims to move informal workers into the formal sector. As a means to this end, the GAWU seeks to establish "formalized relations" between farmers and buyers/marketers/producers. Another major effort has been in making the case for the functioning independence of cooperatives and associations. These are substantial goals that warrant broad-based understanding and support to the extent feasible.

CONSUMPTION BASED SHARE OF POP. IN POVERTY (%) 2004/2005 ⁵⁸			
	Total	Urban	Rural
Sex			
Female	19.2	10.5	26.9
Male	31.4	10.9	42.4
Education Level of Head of Household			
No education	43.8	22.6	49.7
Primary	25.2	11.4	32.0
Secondary 1	17.2	7.8	25.2
Secondary 2	8.5	4.8	18.3
Superior	4.2	2.6	9.0
Industry of Head			
Agriculture	39.3	22.1	41.9
Mining/Quarrying	5.2	0.0	9.1
Manufacturing	16.8	8.6	29.9
Utilities	0.0	0.0	0.0
Construction	13.0	7.1	25.1
Trading	11.7	7.6	20.3
Transport/Communication	13.8	9.3	25.6
Employment Status of Head			
Public	8.3	5.3	16.0
Wage Private Formal	10.6	5.8	20.8
Wage Private Informal	15.8	14.0	18.5
Self-employment Agriculture	40.3	23.5	42.7
Self-employment non-Agriculture	14.2	7.1	26.4
Non working	32.5	13.6	52.5

MINISTRY OF EDUCATION, SCIENCE, AND SPORTS.

In 1996, Ghana adopted the Free Compulsory Universal Basic Education Program which sets out to ensure nine years of basic education for all young people. A more extended set of reforms was put forward in its Education Strategic Plan (ESP) for 2003–2015. This plan was developed with the objective of meeting the Millennium Development Goals for education and preparing youth with the skills needed to overcome poverty and raise living standards.⁵⁹ The Ghana Education Reform program, established as policy in 2007, seeks, among other objectives, to encourage more children to pursue education to higher levels. Efforts such as these should be applauded, but Ghana still has considerable work to do in improving its educational system to arm its labor force with the knowledge and skills to contribute to the overall economy.

As of 2007, school enrollment in Ghana totaled almost 2 million:

- 1.3 million primary students
- 107,600 secondary students

- 489,000 “middle” students
- 21,280 technical students
- 11,300 teacher trainees
- 5,600 university students⁶⁰

Dropout rates are of concern in Ghana, just as they are in countries throughout the world. A particularly troubling statistic though indicates that as of 2006, only 56 students completed sixth grade for every 100 students enrolled in the first grade.⁶¹ Accordingly, MoESS estimates it will not meet its target rate of universal completion of primary education by 2012, preventing achievement of universal basic completion by 2015—the Millennium Development Goal for education.

Weaknesses at the primary and secondary levels, particularly in the rural regions, have consequences at the highest education levels: beyond low literacy rates, fewer than 3% of Ghanaians attend university. Professional skills are lacking throughout the economy, with both quantity and quality of skills wanting in such areas as agricultural science, management, accounting, food sciences, engineering, and other technical fields. According to the World Bank, Ghana’s preparedness to participate in the so-called knowledge economy is relatively weak. Specifically, Ghana ranked 113th out of 140 countries surveyed in 2007 for economic incentive and institutional regimes, education, innovation, and information and communications technologies.⁶² Although this ranking is somewhat better than its West African neighbors,⁶³ Ghana must do more to meet the demands of the “knowledge economy” that is at the heart of agriculture productivity and growth.

Investment in higher education is increasingly acknowledged as a key component of long-term economic growth, as well as a woefully underplayed aspect of international development. The significance of higher education is explained in a February 2008 working paper of the Center for Global Development:

Higher education is critical to build the human capital that in turn builds the very institutions that are regarded as an indispensable factor of development—the accountants, doctors, engineers, lawyers, teachers—that comprise the middle class. The emergence of a vibrant middle-class, which was neither part of the land-tied peasantry nor part of the aristocracy that drew its privileges from feudalism, was crucial for the development of modern institutions of capitalism and democracy. Institutions are not

58 *Meeting the Challenge of Accelerated and Shared Growth*, *supra* note 42.

59 *Reducing the Vulnerability of the Youth*, *supra* note 52, at 23–32.

60 Home Page Ghana, *Education in Ghana*, available at <http://www.ghanaweb.com/GhanaHomePage/education/>.

61 *Reducing the Vulnerability of the Youth*, *supra* note 52, at 23–32.

62 World Bank, *Knowledge Economy Index (KEI) 2007 Rankings*.

63 In the 2007 KEI, Nigeria ranks 115th, Benin ranks 118th, Cote d'Ivoire ranks 120th, and Burkina Faso ranks 132nd. Senegal performed slightly better than Ghana, ranking 109th. *Id.*

merely an amalgam of abstract rules that shape the incentives of agents; they are embedded within organizations that act as the locus of collective action. The weakness of the middle-class has hobbled the organizational capabilities of institutions in many developing countries, and that weakness is, in turn, partly the result of weak systems of higher education.⁶⁴

As previously discussed, employers in Ghana often need to rely on skilled professionals from other countries to fill the professional and technical skills gap. This fact undeniably drives up the cost of doing business in Ghana; however, it also presents on-the-job learning opportunities for local employees.

SOCIAL DYNAMICS

SEASONALITY OF EMPLOYMENT.

Agricultural production is, by its nature, a seasonal business, and the peak labor needs of many enterprises are highly correlated, that is, when one farm needs more labor, all farms need more labor. Three to five months of intensive work in crop production is followed by a one-time harvest—rice, wheat, corn, or cotton—that must be carried out in a relatively short period to maximize output value.

In some countries, or in some ecological zones, it is possible to get another crop or two each year; but in many developing countries the agricultural work demands are highly uneven. Peak seasonal work demands draw in labor to what are otherwise family farm enterprises; in low seasons, family farm workers migrate elsewhere to find jobs and incomes. Seasonal unemployment or underemployment is, for many, a critical issue. Ultimately, few countries have employment policies well tailored to the specific needs of the agricultural sector and its highly seasonal labor demands.

Successful farm enterprises are able to manage the seasonality of their businesses by developing, sometimes on a cooperative basis, more capital-intensive and complex farm enterprises that smooth out their production and income streams. On-farm investments in irrigation facilities permit double- or triple-cropping of staple crops each year or nearly continuous production of tropical flowers, fruits, and vegetables. Diversification of production enterprises, such as doing poultry and dairy production as well as growing annual crops, also tends to occupy labor more fully and

generate a steadier stream of income for the agribusiness. Construction of storage facilities can further help to even out the sales over time. While many enterprises continue to rely on family labor, most of these commercial agricultural enterprises hire labor either full time or on a seasonal basis. Gradually, capital both substitutes for, and increases the productivity of, labor employed. This capital is hard to come by, and as addressed in this report's chapter on Getting Credit, its lack thereof provides a major stumbling block to establishing more efficient enterprises that might better "smooth out" production and income streams and better guarantee employment.

THE SHARECROPPING CULTURE.

A recent report pertaining to agriculture productivity and land rights in Ghana's Akwapim District confirmed that individuals who hold powerful positions in a local political hierarchy have more secure tenure rights, and that as a consequence they invest more in land fertility and have substantially higher output.⁶⁵ Moreover, the report found that the intensity of investments on different plots cultivated by a given individual correspond to the individual's security of tenure over those specific plots and, in turn, to the individual's position in the political hierarchy relevant to those specific plots.⁶⁶ In other words, the poorest of the farmers in Ghana have just a tenuous relationship to the land they work, a situation that undermines their productivity and incentive to farm the land to the best of their abilities.

In Ghana, a vast portion of cultivated land is operated under a system of sharecropping, that is, a system of agricultural production in which a landowner allows a tenant to use the land in return for a share of the crop produced on the land (e.g., 50% of the crop). Under such a relationship, agricultural workers, by definition, lack secure tenure rights. Sharecroppers in Ghana, who generally lack meaningful connection to political hierarchies, have insubstantial rights to the returns from their labor and may be disenfranchised at almost any time. This lack of rights impacts sharecroppers' investment incentives, particularly their incentives to let land lie fallow, which is one of the most important investment decisions farmers make in West Africa.

In Ghana, the two main characteristics of tenancy contracts, in which the farmer pays rent to the landowner, are incentive power and length. Crops that have lower monitoring costs are more likely to be sharecropped, particularly staples such as maize, cassava, and

64 Devesh Capur & Megan Crowley, *Beyond the ABCs: Higher Education and Developing Countries*, Center for Global Development Working Paper 139 (February 2008), at 4–5.

65 Markus Goldstein & Christopher Udry, *The Profits of Power: Land Rights and Agricultural Investment in Ghana* (September 2008), at 5–7.

66 *Id.*

yam. This diagnostic found, however, that tenancy contracts are not common between landholders (often paramount chiefs) and sharecropping farmers and that, accordingly, sharecroppers go unrecognized by the law and the law's supporting institutions. Interviews suggested that only where paramount chiefs had registered such land do sharecroppers have possible claims. Issues of contracts and land tenure are at the heart of questions of sharecroppers' legal status and their rights as workers. Although Ghana's widespread system of sharecropping acts to some extent as a "safety net" that ensures that "everyone who needs land gets at least some," the costs associated with this safety net are large, because land is farmed inefficiently with large losses of potential profits for people who are not well connected to the political hierarchy that allocates the land.⁶⁷

RECOMMENDATIONS

- Publish the universe of labor and employment-related laws and regulations in a single, accessible, and adequately maintained place.
- Revisit the 2003 labor law and remove all aspects that are unduly burdensome on the ability of employers to hire and fire employees at will.
- Review and, where necessary, reform system of immigration and work permits. Investors unable to find workers with the skills they require should be enabled to employ expatriate workers meeting their skill needs with minimal interference from the state. There should be no arbitrary limits on employing foreign employees.
- Examine the process to date of implementation of the 2003 labor law and identify opportunities for improved implementation, particularly as it concerns the rights of casual workers.
- Without recreating donor-supported work that has been done in the recent past, move forward with the creation of a workable law on cooperatives that supports the cooperative model as a sustainable means of local investment and agricultural jobs.
- Analyze and evaluate all donor and government support directed over the past five years to FBOs with an eye toward lessons learned and pitfalls to be avoided. Identify those interventions that were started and then abandoned, and determine whether they should be revisited or relaunched.
- Create linkages between more well-organized FBOs and Ghana's business schools, developing partnerships in marketing and business development services.
- Study, propose, and implement options for creating tax breaks or other incentives for companies that invest in worker training. There are many models for such a system throughout the world, including government training grants or subsidies, tax credits, and public-private training partnerships. These warrant further consideration from the perspective of what would work best in Ghana.
- Encourage professional and business associations to continuously provide information about and train their constituencies in the details of the labor law.
- Review law school and business school curricula to ensure that they are teaching not only general topics in labor law, but also the law as it pertains to the agricultural sector.
- Provide media training in the specific area of fair, thorough, and accurate coverage of labor and employment topics.
- Strengthen and expand opportunities for vocational education and training. Continue improvements to primary and secondary education systems, with particular emphasis on encouraging higher rates of primary-school completion and progress to secondary school. Examine how, particularly with respect to girls, issues of infrastructure and sanitation impact the decision to pursue secondary education.
- Seek greater understanding and documentation of sharecropping relationships, so that these informal relationships can be documented to the extent that the farm workers have clear and verifiable access to legal rights.

⁶⁷ World Bank Findings Report, Ghana (2006).



REGISTERING PROPERTY

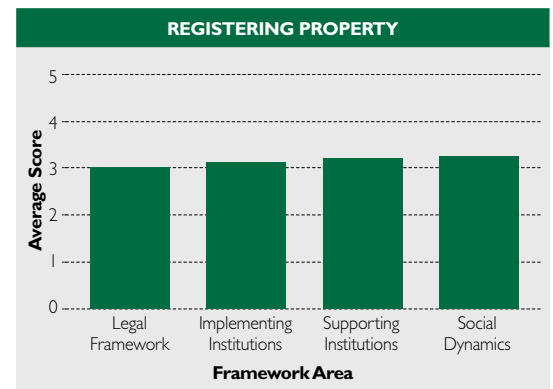
Diagnostics such as this one typically involve a considerable amount of investigative research—interviews, literature searches, and fieldwork—designed to unearth the many invisible or opaque problems that affect a given sector in a given location. With regard to land tenure and its effect on the enabling environment for agricultural production and processing in Ghana, this is demonstrably not the case. In terms of literature alone, the weight of publications addressing land tenure in Ghana is crushing: it is not unusual for land tenure studies to feature bibliographies that consume 10% of their total mass. In dealing with such issues, the challenge is less one of investigating whether the problem exists, and more that of distilling the issue down to its essential components, assessing any adverse impact on the ability of the agribusiness sector to operate efficiently, and identifying actual and potential reforms that may mitigate this impact.

In Ghana, the fundamental problem with land tenure is that it straddles two vastly different pillars of law and practice. On the one hand, there is the statutory regime of the government of Ghana, codified in the Constitution of 1992 and supported by an extensive body of law and regulations dealing with the ownership and use of land. On the other hand, there is a complex customary regime governing the assignment of tribal lands (generally referred to as “stool lands” in the south and “skin lands” in the north) based on centuries of oral tradition and practice, varying by location, chiefdoms, and systems of lineal succession.⁶⁸

system—has never been recorded for the vast majority of the lands in Ghana. As a result, multiple claims on the same piece of property are the rule rather than the exception, and the courts have become, to a considerable degree, overwhelmed by land title disputes. According to one government source, “Land administration is bedeviled by the multiple sale of land by different parties claiming ownership of the same parcel of land, the poor use of compulsory acquisition powers of government agencies to acquire various tracts of land for which they are unable to pay compensation, weak management, both public and customary and, quite recently, the menace of land guards. As of July 2004, there were about 66,000 land disputes before the courts, resulting from the inability of traditional or customary authorities to identify the extent of land boundaries.”⁶⁹

REGISTERING PROPERTY	
<i>Doing Business</i> Ranking 2009	31
<i>Doing Business</i> Ranking 2008	27
Procedures (number)	5
Duration (days)	34
Cost (% of property values)	1.2

Since tribal lands are estimated to account for as much as 80% of the land surface of Ghana, this customary regime, and the imperfect fit between its regulations and those of the national government, exerts a powerful effect on the allocation and use of land nationwide. There has never been close coordination between these autonomous land administration systems, and title—especially for lands allocated under the customary



68 Ernest Aryeetey et al., *The Politics of Land Tenure Reform in Ghana: From the Crown Lands Bills to the Land Administration Project* (2007) (hereinafter *Politics of Land Tenure Reform*), at 10.

69 Ghana Land Administration Project website, www.ghanalap.gov.gh.

Concern about the compatibility between Ghana's customary land tenure system and agricultural development is, in fact, nothing new, as explained by another source:

At its first meeting in 1889, a Commission of Economic Agriculture in the Gold Coast noted that the nature of property in land and the pattern of land use were among the factors hindering the extension of commodity agriculture in the Gold Coast. They singled out for particular criticism the existing juridical forms of land relations, particularly the apparent inability of individuals to acquire indefeasible property in land, and shifting cultivation, which they condemned as "backward and practiced only by the most backward tribes."⁷⁰

Questions persist 120 years later as to the effect of this plural system on investment, particularly foreign investment, in Ghana's agricultural sector. In the opinion of some, land acquisition, ownership, and management of land relations constitute some of the biggest challenges to progress on Ghana's development agenda. Land disputes are rampant throughout the country, and land disputes are estimated to represent 50% of all court cases filed nationally.⁷¹

In the midst of these questions, it would be easy to lose sight of the fact that investment—both foreign and domestic—in Ghanaian agriculture and agribusiness continues to take place. For example, Cargill is building a state-of-the-art cocoa processing facility to produce cocoa liquor, butter, and powder; the facility will be located in the port of Tema and will process 60,000 tons initially, with the potential to expand to 120,000 tons. Archer Daniels Midland has a similar plant under construction in Kumasi. In recent years Ghana Nut, Integrated Tamale Fruit Company, and Golden Exotics have all initiated agribusinesses and constructed facilities in the horticultural sector. The Millennium Development Agency, with funding from the U.S. Millennium Challenge Corporation, will deploy a significant portion of its \$547 million budget for its Agriculture Project, including loans and grants to commercial farmers and FBOs for the improvement of post-harvest handling and value chain services.⁷² All these investments have a significant land component; in most cases, this has involved stool or skin lands.

During interviews with owners and managers of these companies, a consistent message emerged: the process of securing land for agribusiness purposes is slow and complicated, and challenges are commonplace, but such

problems are generally manageable. Even in the case of ventures that could not be brought to fruition, land tenure constraints were not deemed to have played a determining role. In accounts of the foreign fruit company seeking to trade in Ghanaian bananas, discussed in this report's chapter on Starting a Business, the issue of land tenure was not mentioned as a critical factor in its ultimate decision to invest elsewhere in Africa.

Based on the evidence at hand, then, it appears that the land tenure issue constitutes a disincentive to orderly development, and is vulnerable to challenges in both the judicial and customary settings. At the same time, experience indicates that the risks associated with land insecurity, while problematic, are generally considered to be manageable by companies that confront them.

The AgCLIR indicator scores for Registering Property, shown in the graph in this section, hover very close to a "3," meaning that the subject matter area shows an equal amount of strengths versus weaknesses.

LEGAL FRAMEWORK

STATUTORY REGIME.

The ultimate authority for statutory land law in Ghana resides in the **Constitution of 1992**, which dedicates an entire chapter to the subject.⁷³ The Constitution makes specific reference to "public lands, vested in the President on behalf of, and in trust for, the people of Ghana,"⁷⁴ and stool lands, which "shall vest in the appropriate stool on behalf of, and in trust for the subjects of the stool in accordance with customary law and usage."⁷⁵

Much of the Constitution's chapter on land and natural resources deals with the establishment of a Lands Commission and an Office of the Administrator of Stool Lands. The principal responsibilities of the Lands Commission include management of public lands, coordination between state and customary authorities

KEY LAWS

- Constitution of the Republic of Ghana, 1992 (Chapter 21: Land and Natural Resources)
- Lands Registry Act, 1962 (Act 122)
- Survey Act, 1962 (Act 127)
- Land Title Registration Law, 1986 (PNDC 152)
- Lands Commission Act, 2008
- Customary/Traditional Land Tenure Systems

70 *Politics of Land Tenure Reform*, *supra* note 68, at 14–15.

71 Ernest Aryeetey et al., *Legal and Institutional Issues in Land Policy Reform in Ghana* (2007), at 1.

72 See MiDA website, www.mida.gov.gh. MiDA's budget also includes investment in land tenure facilitation to improve tenure security for existing land users and to facilitate access to land for commercial crops in the intervention zones.

73 Constitution of the Republic of Ghana, 1992, Ch. 21 (Land and Natural Resources).

74 *Id.* (Art. 257 (1)).

75 *Id.* (Art. 267 (1)).

on the establishment of development policies, and development and execution of a comprehensive land title registration system throughout Ghana. The Office of the Administrator of Stool Lands, according to the Constitution, is responsible for the establishment of a stool land account for each stool, to serve as a repository for all incomes generated by the land of that stool, to effect collections and disbursements of such incomes, and to assure that stool land dispositions are in conformity with national and regional planning authority programs. The Constitution also stipulates that disbursement of income derived from stool lands will be distributed, once 10% of the total has been withheld to cover the office's administrative expenses, according to the following schedule:

- 25% to the stool through the traditional authority for the maintenance of the stool in keeping with its status;
- 20% to the traditional authority; and
- 55% to the District Assembly, within the area of authority of which the stool lands are situated.

Under these provisions, the customary holders of land are ultimately granted only 40.5% of total proceeds from land rents, while the state, through its Office of the Administrator of Stool Lands and the District Assemblies, receives 59.5%. This has led to the development of a parallel and undocumented system administered by customary authorities through which they are able to capture a far larger participation in the transactional values involved in the extension of leases to third parties. This system—known as “drink money” or “cola”—is discussed in the Implementing Institutions section of this chapter:

Other constitutional provisions of interest include a prohibition against the vesting of a freehold interest in any land in Ghana (either state or customary) to a person who is not a citizen of Ghana, the conversion of all historical freehold interests held by non-citizens into leaseholds, and the establishment of maximum leasehold terms at 50 years.

CUSTOMARY REGIME.

An estimated 80–90% of all undeveloped land in Ghana is held under customary law. There are three types of customary land rights recognized in Ghana: allodial or freehold title, held by the community as a whole; usufruct, held by individuals or groups of individuals who form part of the community; and various types of tenancy, including leaseholds, that are allocated either to

community members or to strangers.⁷⁶ Unlike the straightforward provisions regarding land transactions and land tenure contained in the Constitution of 1992, and laws involved in the establishment of a formal registry for land titles, the rules by which kings and paramount chiefs allocate the land they hold in trust are based on customary practice, handed down by oral tradition, and vary according to tribal group and location within the country. While this approach lends itself to certain variances in interpretation over time, and thus contains a high propensity for dispute, there appears to be a considerable richness in the range of situations these rules cover, and a general understanding among those who are subject to them. By way of example, one customary law scholar⁷⁷ lists seven ways by which land in the Akyem areas of Ghana's eastern region can be acquired:

1. Clearing mature forest land that has not been cultivated for a long time
2. Inheritance
3. Gift of land from a relation
4. Loan of land by a relative or friend
5. Land purchase
6. Crop share arrangements
7. Land leasing

Interviews during this diagnostic confirmed that most land transactions by agribusiness entrepreneurs involve leases of stool or skins lands of varying lengths, and several (especially in the case of more extensive projects) involve multiple agreements with multiple landlords. The multiplicity of agreements derives from the facts that most agricultural holdings in Ghana are of three acres or less and that the availability of land under the control of any particular paramount chief is limited. In the case of a project such as Golden Exotics, for example, involving 875 acres of pineapples and 2,050 acres of bananas, the land acquisition process left the company with “hundreds” of lease agreements.

LANDS COMMISSION ACT.

A daunting array of agencies and institutions are involved in the implementation of land law and land tenure policy in Ghana. In 2003, a Land Administration Project (LAP) was launched with technical assistance and funding support from the World Bank and other donor groups. The LAP is a 15-year project designed, in the World Bank's description, to “enhance economic and social growth by improving security of tenure, simplifying the

76 Agbosu, Lennox; Awumbila, Mariama; Dowuona-Hammond, Christine; Tsikata, Dzodzi; *Customary and Statutory Land Tenure and Land Policy in Ghana* (2007), at 33.

77 Amanor, Kojo; *Shifting Tradition: Forest Resource Tenure in Ghana, The Dynamics of Resource Tenure in West Africa* (2002), at 48–60.

process of acquiring land by the populace, developing the land market and fostering prudent land management by establishing an efficient system of land titling, registration and administration based on clear, coherent and consistent policies and laws supported by appropriate institutional structures.⁷⁸

The Lands Commission Act, enacted in September 2008, was a product of the Land Administration Project. This law is intended to revise and consolidate into one piece of legislation the existing laws on the major public institutions that manage and administer land in order to improve their services and to create a “one-stop shop” for land management and land services delivery.⁷⁹ The statute creates a new and improved Lands Commission, and merges under it the other four primary land administration agencies—the Survey Department, the Land Valuation Board, the Land Commission Secretariat, and the Land Title Registry. Though enacted, this law has not yet been implemented, and the regulations derived from this new legislation are not yet available. For this reason, the following section on implementing institutions will focus on the implementation of regulations that all pre-date the Lands Commission Act of 2008.

IMPLEMENTING INSTITUTIONS

The long list of implementing institutions⁸⁰ for property registration owes much of its heft to Ghana’s need not only to accommodate both the customary and statutory channels of land acquisition, but also to coordinate—to the maximum extent possible—the two systems.

Thus, even in cases where land is acquired for agricultural purposes solely through customary channels, there remains a need on the part of the acquiring individual or enterprise to register the claim on the land with the **Land Title Registry**. Title registration serves as a means of defending one’s leasehold against challenges. It is also the primary means of perfecting title in order to justify long-term investments and improvements and to place the leaseholder in a position to collateralize such investments and improvements.

LEASEHOLDS.

Most rural land resides under the control of the customary systems. The formal procedures for undertaking a lease are typically unwritten and somewhat opaque, although they do appear to follow similar paths, regardless of the region or tribal affiliation. Namely, a party seeking rights to use land identifies the general area in which he

KEY IMPLEMENTING INSTITUTIONS

- Ministry of Lands and Forestry
- Lands Commission
- Survey Department
- Land Title Registry
- Department of Town and Country Planning
- Stool Lands Administrator
- Land Valuation Board
- Land Administration Project Unit
- Forestry Commission
- Regional Coordinating Councils
- District Assemblies
- Regional Lands Commission
- Stool Lands Boundary Settlement Commission
- Joint Border Commissions and Minerals Commission
- National House of Chiefs/Regional House of Chiefs/Traditional Councils/Individual Chiefs

or she wishes to locate. That party then identifies the tribe that holds title to that area, and enters into negotiations with its king or paramount chief. Lease rates are controlled and collected by the Lands Commission, and tribes receive about 40% of the total proceeds from these land rents. In response to this statutory stipulation, a separate customary vehicle has evolved by which the king or paramount chief, acting on behalf of his people, collects payments for the lease concession that more closely reflect the value of the property being assigned. Such payments are called “drink money” in most parts of southern and western Ghana, or “cola” in the northern regions. This payment is ex-contract, and is not recorded in any of the written records of the lease concession, so as to avoid any unwelcome scrutiny from the Land Commission or the federal tax authorities.

One land official estimated that drink money for urban land in the Ashanti region could range from 1,000 up to 20,000 cedi per plot (0.23 acre), while agricultural land would entail payment of 200 to 1,000 cedi per acre. From the viewpoint of the customary ruler, this payment compares very favorably to the 40% take he can expect to receive on the annual lease rates, which are currently set as follows:

Less than 50 acres	7–10 Cedi/acre
50–100 acres	5–7 Cedi/acre
More than 100 acres	3–5 Cedi/acre

⁷⁸ World Bank. *Ghana Land Administration Project: Project Description* (2001).

⁷⁹ Ghana Land Administration Project website, www.ghanalap.gov.gh.

⁸⁰ *Politics of Land Tenure Reform*, *supra* note 68, at 67.

TITLE REGISTRATION.

Once land has been obtained, either through customary or statutory means, the leaseholder is expected to proceed to the Land Title Registry, where the sequence of steps to be followed, along with target time lines at each step, is seen in the following table. Steps 1, 3, 5, and 6 are conducted by Land Title Registry personnel—hence the definite timelines. The survey is conducted by the Survey Department, over which the Land Title Registry has no control. Once the survey returns with a specific boundary definition, the lease application is published in the daily newspapers of Ghana. Individual publication, while more expensive, can be accomplished within one week of the receipt of survey data; batch publication, which includes 120 notices, can take up to one month. If there is no objection filed to challenge to boundaries, 33 days later—following preparation of certificates and plotting of the location in the registry master file—certificate of title can be delivered. In 25–30% of the cases, however, objections are received and must be adjudicated before the certificate can be granted. In the best of circumstances, the challenges can be resolved through alternative dispute resolution, lasting only 15–30 days. Court cases, which reportedly occur in 2–5% of all applications, can take 6–24 months. In 2004, an estimated 66,000 land title disputes were pending in Ghanaian courts.

ESTIMATED TIME TO RESOLVE LAND DISPUTES IN COURT

1. Lodgment of forms/documents	3 days
2. Survey	Indeterminate
3. Publication in dailies	7–30 days
4. Objections, resolution, adjudication, courts	Indeterminate
5. Preparation of certificates	30 days
6. Plotting	3 days

SUPPORTING INSTITUTIONS

There is a wide host of agencies and organizations that are involved, directly or indirectly, in Ghana's system of land use and ownership. This section discusses the ones that relate most closely to the country's agricultural sector:

GHANA LAND ADMINISTRATION PROJECT.

Land reform efforts in Ghana have a long history. Both in the late nineteenth century under British colonial rule, and again in the immediate post-independence period in

the 1950s and 1960s under Kwame Nkrumah, land reform policy was essentially based on the notion of removing as much land as possible from customary holders and transferring title to the state. The goal was to create a land tenure system that was consistent, transparent, and flexible, and provided investors with the security and control it was thought they needed in order to operate efficiently and to invest enthusiastically in Ghana. For many reasons, these reform efforts failed to achieve their objectives, and most often aggravated the very problems they were designed to palliate. Current conventional wisdom, as embodied in the Land Administration Project, is based on the notion of incremental reforms whereby land tenure security can be assured and the number of boundary disputes can be reduced, but always within the context of the customary system which has long played the preponderant role in Ghanaian land management. Radical approaches to land reform such as the Crown Lands Bills of the late century, which sought to seize all unexploited land, regardless of customary ownership and convert it into state lands, have been replaced by programs that support the streamlining of services to improve the efficiency with which available land can be identified and allocated to those who seek it, and with which title can be registered—but all the while respecting the customary allodial claim to the underlying asset. This project, now in the fifth year of its expected 15-year term, has already led to the enactment of the Lands Commission Act of 2008, which will execute far-reaching reforms in the structure of the government's land administration system.

GHANA INVESTMENT PROMOTION COUNCIL (GIPC).

The GIPC's role in attracting and facilitating foreign investment in Ghana is detailed in this report's chapters on Starting a Business and Protecting Investors. As part of its services, GIPC also works to assist investors in the acquisition of the land they need to support their investments. Although GIPC is widely praised for the quality of its work, it appears more accomplished in facilitating investments in industry and services than in agriculture. This applies to the support it is able to provide in leasehold identification and negotiation as well as in other aspects of its facilitation services. Given its recognized competence, a stronger role for GIPC in all aspects of agribusiness investment facilitation—including leasehold arrangements—would make agribusiness investment in Ghana more attractive.

THE JUDICIARY.

As noted, Ghana's courts are clogged with land disputes. With donor support, there are plans for special land courts to be developed to manage this roadblock in Ghana's system of dispute resolution. Success will depend not merely on the capacity of the courts, but also on the quality of the law under which they operate. Greater detail on Ghana's court system is set forth at this report's chapter on Enforcing Contracts.

KEY SUPPORTING INSTITUTIONS

- Ghana Land Administration Project
- Ghana Investment Promotion Centre
- Judiciary
- Ghana Bar Association
- Ministry of Food and Agriculture
- ADR institutions and professionals
- Donors
- MiDA

MINISTRY OF FOOD AND AGRICULTURE (MOFA).

The Ministry of Food and Agriculture is responsible for several of the agencies whose operations are key to success in the agricultural sector, including certain aspects of land use. The **Department of Agricultural Extension Services** (DAES) is charged with disseminating information about productive use of land to the farming public, which encompasses over six million farmers. The **Irrigation Development Authority** (IDA) is charged with addressing the country's surprising dependence on rainfall, which serves to perpetuate the vulnerability of the agricultural sector.⁸¹ Only 0.5% of Ghana's cultivated land is currently under irrigation, placing the country in the bottom among West African nations. These figures are even more striking in light of the fact that less than 8,600 hectares of the irrigated area in Ghana—28% of the total—are public schemes, while the remaining 72% are privately owned and operated. The government of Ghana has declared that one of the main objectives of its policy for the agricultural sector is to accelerate the provision of irrigation infrastructure. The IDA, however, appears to consider irrigation only a minor element among the many factors limiting agricultural productivity in the country. The relationship between this institutional ambivalence and the country's system of land use rights warrants additional scrutiny.

ADR INSTITUTIONS AND PROFESSIONALS.

There is a high level of expertise in alternative dispute resolution (ADR) in Ghana, with mediation becoming particularly popular as a skill to be taught and learned. There are private companies involved in training and providing mediators, as well as a professional association called the Ghana Association of Mediators and Arbitrators, which regards its mission as the "popularization" of ADR. Ghana's legal community, with support from the donor community, is enthusiastically embracing ADR, and the knowledge and skills available to resolve cases in this fashion is high. A particularly innovative approach to integrating ADR into dispute resolution in the rural areas is training of tribal chiefs in mediation and other dispute resolution skills. Such interventions should be tracked for overall effectiveness and lessons learned.

There is not yet a consensus about public receptiveness to ADR as a means of resolving disputes, particularly land disputes. One Accra-based lawyer asserted that "Ghana is not a litigious society...we have much more informal methods of resolving disputes." Yet a lawyer in Tamale indicated that when it comes to formal dispute resolution, "People do not feel satisfied with ADR—they want the court [to decide their cases]."

DONORS.

The World Bank, with the support of the Canadian, British and German development agencies in Ghana, has played a pivotal role, both in the conceptualization of the LAP's orientation and in the funding of its initial activities. On a separate but parallel course, Ghana's **Institute of Statistical, Social and Economic Research** (ISSER), with financial support from USAID, has produced a series of six technical papers under the Land Policy Research Project, dealing with several dimensions of the land tenure system in Ghana.

MiDA.

Over the next few years, the MCC-funded MiDA program plans to pursue a private land market approach to improve tenure security for existing land users and to facilitate access to land for commercial crops in the program's intervention zones. This land tenure facilitation component of the MiDA program will concentrate on facilitating land transactions by providing on-demand land services, supporting demarcation and registration of rural land rights in zones with high potential for commercial agriculture, contributing to the land policy deliberations within the context of the LAP, and improving the ability of Ghana's courts to process the massive backlog of land dispute cases.

81 Institute of Statistical, Social and Economic Research, *The State of the Ghanaian Economy in 2006*, at 103–38.

“...outsiders are well advised to keep in mind the social role that land has long played—and continues to play—in Ghanaian society. The added importance that this social dimension imparts to land issues could be helpful in understanding the extreme litigiousness of land issues in an otherwise non-litigious society.”

SOCIAL DYNAMICS

From a western perspective, land is essentially a commodity, valued on the basis of what it can produce and what it can be sold for. While there may have been stronger cultural and social links to the land in generations past, those links have dissipated with time and distance, such that today they seem more like romantic notions of a bygone era than the tangible manifestations of an individual's bonds to his family and his community.

This romantic notion, however, appears to be alive and well in Ghana. As expressed by one commentator:

It has been argued that when society was governed strictly by customary law, land was the embodiment of the rights of the primordial group—defined either as a village, stool, or family, and similar kinship groups. It was this group which owned the land collectively. This notion of land, as constructed by traditional society, has remained such that in spite of the tremendous social, economic and political changes which have occurred, land remains embedded in this traditional ideology as collective property.⁸²

In addition to the political, legal, and economic dimensions of land that have already been discussed here, outsiders are well advised to keep in mind the social role that land has long played—and continues to play—in Ghanaian society. The added importance that this social dimension imparts to land issues could be helpful in understanding the extreme litigiousness of land issues in an otherwise non-litigious society. It could also be helpful in understanding the vigor—and the success—with which customary rulers and the people they represent have resisted land reforms based on expropriation by the federal government.

It could further be helpful in explaining the slow pace at which land can be aggregated to meet the demands of large-scale agribusiness investors. One agriculture entrepreneur felt that it would probably take 24 months to identify and negotiate lease agreements for the 7,500 acres of banana production land that one international company sought to develop in Ghana (see discussion in this report's chapter on Starting a Business). It also explains the attitude shown by functionaries at the Ashantehene Land Secretariat when they heard of this company's experience: “We have more than enough land to accommodate their

needs. But we would probably only give them 1,000 acres at first, and see how they conduct themselves before we gave them more.” Two years may seem interminable—and unacceptable—to an investor looking to ramp up a new venture. Planting at a rate of 15% of final target per year, and spending eight years before attaining full coverage, may be a deal breaker for that same investor. But that may be the most realistic time frame with which a customary hierarchy can identify and assemble this extent of acreage, and persuade its people that this project is in their interest.

A final point is instructive. At the roundtable discussion held at the conclusion of this diagnostic, an informal group of land professionals concluded that land issues in Ghana will be resolved by nothing less than an Act of Parliament that calls for a high-level commission to address Ghana's long-term vision for its own land. Indeed, Ghana's land quandary is grounded in its constitutional commitment to honoring its tribal roots and cultural history. This is an issue that can benefit from donor support in the long term, but only *after* a home-grown agenda based on widespread consensus is permitted to evolve.

RECOMMENDATIONS

- Consider implementation of the diagnostic roundtable recommendation favoring establishment of a Parliament-supported high-level commission addressing the long-term future of land ownership in Ghana.
- Continue pursuit of the Lands Commission Act of 2008 objective of simplifying the registration process by institutionalizing a “one-stop shop” system.
- Strengthen the capacity within the GIPC to facilitate the accumulation of agricultural land on behalf of potential investors.
- Inject additional resources into the land registration program, so as to reduce the volume of land disputes with which courts must deal.
- Establish a special ADR vehicle dedicated to the resolution of disputes over customary lands, to further reduce the burden on the conventional court system.
- Recognizing that kings and paramount chiefs are essential allies in solving the land tenure crisis in Ghana, develop pathways to integrate kings and chiefs more closely into the formal land attribution process, by giving formal recognition and

⁸² *Politics of Land Tenure Reform*, *supra* note 68, at 5.

tax-free status to drink money, as well as other accommodations to remove the barriers to cooperation between constitutional and customary land authorities.

- In addition to customary land registration and attribution activities, assist customary land management agencies to develop promotional programs that accumulate land banks for specific uses and promote and market these lands to the domestic and foreign investment communities.
- Provide official sanction and support for donor projects such as the World Bank's Land Administration Project, and MiDA's private land market project.



GETTING CREDIT

Less than 10 % of lending in Ghana is directed toward farmers, a remarkable figure, given that more than one-third of the country's economy and over half of its people derive their incomes from agriculture.⁸³

GETTING CREDIT	
Doing Business Ranking 2009	109
Doing Business Ranking 2008	102
Legal rights index	7
Credit information index	0
Public registry coverage (% adults)	0
Private registry coverage (% adults)	0

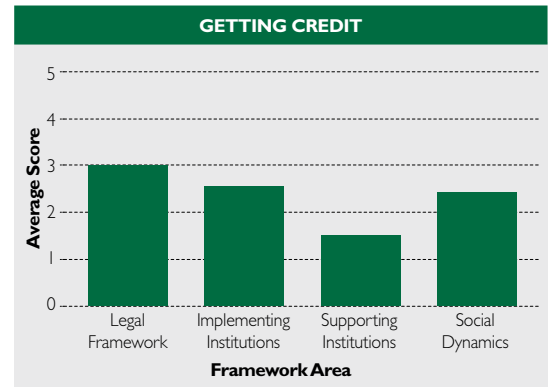
There are several factors contributing to the poor state of credit for agriculture. Ghana's financial markets are highly fragmented and exhibit the following characteristics: (1) borrowers and lenders cannot carry out efficient transactions; (2) lenders cannot protect themselves against local credit risks by easily diversifying their loans; (3) capital savings and investment do not readily balance between surplus and deficit regions; and (4) the cost of capital to equally creditworthy borrowers is highly variable. Taken together, these characteristics contribute to increasing the costs of capital and, consequently, decreasing the availability of long-term investment capital.

Access to credit is vital to agricultural-sector development, as agriculture finance underpins the sector's performance. Ghana's laws allow bank and non-bank financial institutions, with very few restrictions, to:

- Accept pledges of livestock and equipment as collateral
- Allow purchase of livestock or equipment on credit
- Finance trade fixtures such as storage bins, pumps, compressors, etc.
- Finance standing crops as preferred collateral
- Provide a security interest that can attach to rotating inventory or to proceeds of collateral
- Lend on the strength of a signature (credit cards).

Notwithstanding this generally sound legal framework, Ghana's financial institutions are averse to agriculture lending for many reasons. The primary reason cited is the difficulty of securing a transaction. At each stage of a secured transaction, risks are found:

- *Creation* of collateral is expensive, cumbersome, and does not encompass instruments to cover transactions of primary economic importance.⁸⁴
- *Perfection*⁸⁵ of collateral is uncertain because the claims against security interests of lenders and creditors or sellers are difficult to rank.
- *Enforcement* of financial contracts hinders rather than facilitates foreclosure or repossession. This is often crucial in the case of agricultural property, because many types of inventory are highly perishable, machinery depreciates quickly, and accounts receivable have a life of only 30 days.



Moreover, in agricultural finance, risk-related losses tend to be systemic—risk of default, price risk, weather—and interlinked, while lending costs tend to be particular to borrowers—transaction costs, due diligence costs, and supervision. This disparity between the systemic nature of risk-related losses and high lending costs is a further disincentive for individual banks to lend to agricultural borrowers. Insurance markets can effectively aggregate and redistribute risk-related costs; but, unfortunately, such insurance covering the agricultural sector is generally not available in Ghana.

The AgCLIR indicator scores for Getting Credit are the lowest among the subject matter areas covered in this report. In all aspects—legal framework, implementing institutions, supporting institutions, and social dynamics—the AgCLIR scores are generally negative. This

83 This figure derives from informal estimates provided by lenders during the course of this diagnostic, Bank of Ghana estimates, and unpublished donor estimates.

84 Instruments that enable credit transactions provide certainty of an asset's ownership, against which credit can be extended, and for the collateral to be disposed of if repayment cannot be made. A registry system verifies an asset's ownership. A lien is one example of an instrument that facilitates credit, as it provides public notice of a security interest in an asset. Failure to perfect a security interest risks "avoidance" (loss) of the security interest in bankruptcy or subordination of it to the claims of third parties. Another such instrument would be a promissory note where a secured party can purchase a promissory note in a securitization transaction and leave the note with the seller for servicing, and the secured party's rights in the promissory notes will be protected in the seller's bankruptcy. Such instruments lower the risk of loss to a party in a transaction.

85 Perfection of collateral is: The process by which a secured party protects its security interests in collateral against the claims of third parties who may look to the same collateral to satisfy the debtor's obligations to them.

chapter points out exceptions to the problems along with opportunities for reform, and further presents a lengthy list of recommendations to improve the country's performance in this area.

LEGAL FRAMEWORK

Financial institutions in Ghana are governed and regulated under two main laws: the Banking Law, 1989 (PNDC 225) and amended in 2005, and the Non-Bank Financial Institution (NBFI) Law, 1993 (PNDC 328). All banks including 123 rural and community banks (RCBs) operate under the Banking Law. Put into perspective, Ghana's total bank capitalization is about as much as Nigeria's fourteenth largest bank.

According to many stakeholders, Ghana's financial system can be strengthened most by more effective implementation of the existing regulatory framework. For instance, for an individual or firm to ascertain its rights over land or water resources requires proper recording and access to relevant documentation; such recording and access do not yet exist on an adequate scale. Moreover, there are no laws particular to agricultural lending. Such laws could be helpful to banks in areas of land tenure and asset securitization.

KEY LAWS

- Bank of Ghana Act (2002)
- Banking Act (2004)
- Financial Institutions (Non-Bank) Law (1993)
- Banking Law (1989, as amended in 2005)
- Companies Code (1963)
- Bank of Ghana Notices/Directives/Circulars/Regulations

GENERAL BANKING LAW AND POLICY.

The legal framework generally fosters a financial sector supportive of the agriculture-based and rural economies, substantially by creating a laissez faire approach. At the highest policy level, the new **National Economic Development Plan** will come into force in 2009. The new plan will increase the number of agriculture products eligible for more intensive support from the government: cotton, cassava starch, palm oil, and Shea butter. This support will not involve a buying monopoly, such as the cocoa sector, but would provide more marketing support. There is unlikely to be any directed credit to these sectors, but they may receive favorable tax or other regulatory treatment.

Development of financial sector law and policy is prioritized around increasing access to financial services. According to recent updates of the IMF's Financial Sector Assessment Program, Ghana's financial sector development "has been driven by well-sequenced financial sector liberalization policies, enhanced competition (including from abroad), and gradual capital account liberalization. The success of Ghana's ambitious financial reforms can be attributed largely to solid 'buy-in' from key stakeholders—especially the private sector—and coordinated donor assistance." Interviews for this diagnostic suggest a reasonably high level of satisfaction among lenders with the scope and pace of financial sector reform; borrowers, however, do not agree as the banking system barely serves 10% of the bankable population.

The Bank of Ghana (BOG) provides regulatory impact analysis of proposed reforms prior to their adoption. Although reform initiatives are generally examined in relation to their economic benefits, they are not always considered in relation to the institutional capacity to supervise and monitor their implementation. Recent financial sector reforms have been encouraging, including the Foreign Exchange Act of 2006, which partially liberalized the capital account, the introduction of a modern payment and clearing architecture with a real-time gross settlement system, and establishment of a Central Securities Depository System.

There are no interest rate caps or similar governmental interventions that affect the cost of money. Laws permit flexible loan structures that support agricultural production, as demonstrated by the creativity of savings and loan (S&L) lending against inventory and crops that are still in the field. Laws permit value-chain finance. Trade finance is widely available, if at a high interest rate. Most credit, in fact, is high turnover (import) trade finance.

Collateral is very difficult to securitize to a considerable extent because of the dearth of information on assets of all types, fixed or moveable. Without title companies, asset registries, or other means to ascertain prior claims on collateral, lenders must internalize the requisite search and legal costs.

MORTGAGES.

The legal framework does not provide adequately for mortgages. As stated in a June 2007, Bank of Ghana Policy Brief:

[T]he main underlying factor affecting the development of a mortgage industry in Ghana is lack of secure and transparent titled lands, with

“According to many stakeholders, Ghana’s financial system can be strengthened most by more effective implementation of the existing regulatory framework.”

the consequential reduction in the granting of mortgage loans. The backlog of land title applications perpetuates multiple sale of land thus; the land market cannot operate effectively to either enable the development of a formal market for mortgage or to act as security for mortgage finance. Establishment of a strong legal and regulatory framework which comprises consistent and holistic set of laws in areas such as property rights, collateral, foreclosures etc. for the housing sector is required. This calls for amendment of the mortgages decree (1972) and also the [Home Mortgage Finance] law.⁸⁶

Ghana's rudimentary mortgage system really got started with the Home Mortgage Finance Law of 1993. This law provides a foundation for the mortgage system while also sanctioning the secondary mortgage market with the intent to create a sustained housing finance market. The law is limited in that it does not extend to all types of mortgages, just houses. Without a solid legal basis, the mortgage market will continue to function below its potential, with predictable effects on the credit market as a whole.

COLLATERAL.

Although the legal basis for moveable, immovable, and intangible agriculture assets as collateral is vague, immovable and intangible agricultural assets are accepted by some institutions, though with caveats. For instance, some banks will securitize crops, provided: (1) there is a proven market; and (2) there is a charge at purchase so that the buyer disburses payment to the lender directly. Proceeds "need to be tied as far up the chain as possible," and the whole chain of transactions needs to be documented. Lenders will sometimes do "collateral management agreements" involving third parties. At least one lender takes some extraordinary risks by lending against future production, live animals, and other types of sector collateral at terms that are not usually secure. This institution devotes considerable resources to monitoring loan performance.

From the evidence, these are early, tentative examples of lenders experimenting with various types of collateral with which they are generally unfamiliar. Such lending can be encouraged by having better qualified credit officers and by facilitating the framework for asset securitization. BOG has drafted a non-bank finance bill that is planned for parliamentary consideration. This bill addresses financial issues encompassing licensing, capital, liquidity,

and other requirements; ownership and corporate governance; accounts and financial statements; powers of supervision and control; and receivership and liquidation. This non-bank bill is a key element of BOG's effort to improve regulation and supervision to meet the challenges of a dynamic and fast-changing financial sector.

While banking laws allow for the collateralization of farm equipment, lending practices have only slowly exploited this opportunity. Farm equipment is used by some lenders as collateral, depending upon the sophistication of the equipment and how fixed it is. Low-tech, highly moveable equipment (such as a sprayer) is not considered as good collateral, whereas a well-equipped storage facility or grain mill is acceptable collateral.

The absence of a law specific to secured transactions deters the quick, inexpensive, and simple creation of a proprietary security right. There is no law that specifically addresses secured transactions, either traditional or non-traditional. The key banking laws are silent on both "secured transactions" and on "collateral" more generally. Lenders are in the position of setting their own ground rules on their use of secured transactions, from the information that they require to the types of transaction they will lend against, encompassing:

- Description of debt
- Ascertainment of the legal or natural status of an entity that is being granted or taking a security interest in a property
- Creation of multiple kinds of relationships regarding secured interests, including direct personal guarantees, third-party guarantees, bank guarantees, etc.
- Acceptance of property interests that allow at-risk collateral owners legal protection and insurance for collateral subject to acts-of-God events
- Non-possessory pledges in a variety of tangible and intangible property interests, including pledges of after-acquired property, values expressed in foreign currency, inventory, equipment, warehouse receipts, future harvests, and other types of assets.

The law tacitly recognizes that ownership or title is not necessary for a borrower to seek creation of a secured interest. Without a specific law, lenders set their own policies on what they will accept as collateral and the documentation that they need for its perfection. Lenders must determine for themselves if they will or will not accept "lawful possession" as sufficient for the creation of a security interest. Moreover, there are no specific

86 Bank of Ghana, Policy Brief (2007).

legal remedies for breach of a secured transaction contract or clear measures for calculating monetary damages if possession of the secured property is not reasonably possible. There are no means for registering a security interest on an asset, whether through collateral registry, by public notice, or with a third party. S&Ls will secure transactions by taking title or other claim to collateral, though without depriving the person receiving a loan of the use of his or her assets. Transaction costs such as appraisal, survey, notarial and registry fees, and lawyers' fees do not represent an excessive part of the transaction value and do not preclude or discourage deals. As indicated, however, the absence of title companies, asset registries, or other means for securing claims drives up transaction costs as lenders must internalize such due diligence expenses.

Non-traditional securitized transactions are initiated by private credit providers, and their legality may be ascertained after the fact in the event of repossession or foreclosure. Where the judicial system upholds the claim, industrywide standards for these transactions are created de facto. Likewise, credit providers set their own policies with regards to the special needs and interests of agriculture borrowers.

AGRICULTURAL-ORIENTED LENDING MECHANISMS.

Agricultural lending practices, common in many countries, are not practiced in Ghana. For example, warehouse receipts are not issued as collateral against crops; nor is the necessary institutional infrastructure for such a system in place. First, there are no bonded warehouses to issue receipts; second, inventory credit is nascent and lenders will need to have much greater familiarity with such lending before venturing into warehouse receipts; third, there needs to be broadly accepted grades and standards against which a receipt would be issued; and, fourth, there are no tradeable contracts, forward or otherwise, though the law does not prohibit such transferability. Banks will lend against some contracts, but their willingness to do so is contingent upon the quality of the contracting parties.

Plant variety patents and other like agricultural assets are respected under the law, and can be used as collateral. Ghana's public sector as represented by Plant Protection and Regulatory Services Directorate, the Ghana Standards Board, and the Water Resource Institute does not meet international standards. Ghana is a signatory to but is not in compliance with the International Plant

Protection Convention (IPPC) in the following areas: laws and regulations; organizational structure; human resources; diagnostic capability; inspection; certification; emergency management; and communication with and participation in international bodies. When Ghana is IPPC-compliant, variety patents and other agricultural assets will be, in theory, useable collateral. The United States, through the Millennium Challenge Corporation, is providing funds under its compact with the government of Ghana to achieve this objective.⁸⁷

LICENSED FINANCIAL INSTITUTIONS.

The Non-Bank Financial Institutions Law of 1993 established nine new categories of licensed financial institutions including S&Ls, credit unions, financial NGOs (FNGOs), government and donor programs, and *susu* collectors. Commercial banks and microfinance institutions (MFIs) are monitored by different financial regulators, and MFIs are monitored separately depending upon their status. The BOG monitors commercial banks and S&Ls, and the RCBs through the ARB Apex Bank; the Credit Union Association monitors the credit unions, while the Ghana Cooperative *Susu* Collectors' Association seeks to set standards for *susu* collectors. The Association of Financial NGOs (ASSFIN) is an apex organization that has the aim of regulating its members' activities. Under the Banking Law of Ghana, RCBs operate as commercial banks, but have a significantly lower minimum capital base requirement compared to commercial banks. In addition, they are not authorized to undertake foreign exchange operations. The clients of RCBs are mainly drawn from within the vicinity of their business operations. Combined, these organizations include both formal (licensed by the BOG) and semi-formal (legally registered but not licensed) lenders. Given the plethora of different types of lenders and the limited resources of financial regulators, effective monitoring of financial institutions is the most pressing problem facing the financial institutions.

NGOs are permitted to operate in the microfinance sector. All MFIs are registered under the Company Law as Company Limited by Guarantee. In February 2006, Ghana approved a new Microfinance Policy Document. This policy provides that the BOG has a distinctly separate microfinance unit within the Banking Supervision Department to address issues of regulation, monitoring, and supervision of the subsector. With the 2006 Microfinance Policy Document, MFIs and commercial banks are treated distinctly by financial regulators, allowing for broader lending to rural areas and

⁸⁷ Millennium Challenge Corporation summary of compact with Ghana, available at <http://www.mcc.gov/countries/ghana/index.php>.

non-traditional borrowers. The MFI industry in Ghana includes five types of lenders: rural and community banks, saving and loans, credit unions, financial NGOs, and *susu* collectors cooperatives.

Laws allow microfinance lenders to extend agricultural loans without collateral security. Microfinance is backed by either a group guarantee or individual guarantor or the borrower must provide some type of collateral. Individual guarantors run the range from family members to commercial partners to businesses such as nucleus farms. Loan recovery rates reported on agricultural lending ranged widely from as low as 60% to as high as 100%. In contrast, recovery rates for micro-enterprise loans extended in rural areas under lending schemes have ranged from 95–100%. What the relationship is, if any, between these recovery rates is unclear.

In practice, microfinance lenders are allowed by law to operate free of depository or reserve requirements in granting agricultural loans. Of the five categories of MFIs in Ghana, three can accept deposits while the others cannot. Some MFIs have been requiring compulsory savings (“skin”) from their borrowing clients as a token or partial collateral guarantee. MFIs are not allowed to accept such deposits, however, unless they are escrowed in a separate account under the name of the borrower. To get at such collateral, the MFIs must place a lien on the account. MFIs are not allowed to account for such borrowers’ savings as balance sheet liabilities.

LAWS ON LAND USE.

Laws concerning land ownership do not prevent the use of land and water rights as collateral in financial transactions nor, however, do they facilitate such use. Tenure of rural land is linked to the amount of investment needed to raise particular crops or animals:

TENURE ASSOCIATED WITH CROP TYPE	
Product	Lease Period
Tree crops (citrus, cocoa), Pineapple	50 years
Staples (cassava, rice, cocoa yam)	10 years
Cattle	25 years
Small ruminants	17 years

These terms take into consideration financing and cost-recovery factors. Subsistence farmers do not generally get leases from the Lands Commission, although village heads will make arrangements on their behalf. Village heads sometimes do not hold titles to land either, except when commercial considerations are involved.

Foreign investors can obtain leases up to 50 years. Fulani herdsmen could, in principle, register as foreign investors and get 50-year leases, although none do in practice.

Laws do not unreasonably limit the terms of levels of credit that can be negotiated between landholders and lenders. While laws may not unreasonably limit credit terms, a complex system of tenure rights does not facilitate credit access either. Technically, laws regarding land title provide sufficiently clear attribution to justify the collateralization of land for purposes of obtaining credit. Ownership domains are relatively clear insofar as there are three categories of domain: government land, “stool”/“skin” land, and family/clan lands. The procedures, formal and informal, associated with usufruct of these lands are very complicated. (See this report’s chapter on Registering Property.) Interestingly, large tracts of land can be obtained by foreign investors, citing the case of an Italian biofuels company that recently acquired 25,000ha of (non-contiguous) land on which it will grow jatropha.

Water rights are so defined and transferable under law as to allow their use as collateral. To secure water rights requires the following items:

- An agreement signed by the District Assembly
- Approval by the Water Resources Commission

There are annual raw water charges levied by the Water Resources Commission that affect the price of water. These items do not ensure the transferability of water rights that will also involve factors such as use, which could require EPA or other approvals.

The Water Resources Commission mandate reads:

Pursuant to the Water Resources Commission Act, No. 522, no person shall divert, dam, store, abstract or otherwise use water resources or construct or maintain any works for the use of water resources prior to obtaining a water use permit. Permits are not required for use of water for fire-fighting, or manual abstraction of water for domestic use.

Accordingly, permits for water resource use are necessary. The Irrigation Authority is slow, even unresponsive; as an example, there are reports of one community that had to wait seven months for the installation of a small dam when the equipment was at the site and ready. A “family size” irrigation system is considered to be 4,500/ha, which is very large and could be used as a security. As an exemplar of regulatory oversight, the Irrigation Authority makes it difficult for a lender to use water as an asset upon which claims can be made.

INFORMAL CREDIT MECHANISMS.

Laws do not abridge the use of informal credit. The informal financial sector and its suppliers are unregulated by the BOG and rarely involve legal documentation. The legal system does not impede the extension of credit terms to growers and grower associations from their wholesale, retail, and export customers pending the sale and remittance of proceeds for their agricultural production. There are some examples of buyers providing value-chain finance to growers and many lenders seek to be involved in such financing because it is lower risk. Nor does the legal system impede the negotiation of pre-harvest advances from wholesalers or distributors to their agriculture suppliers. While the legal system does not impede pre-harvest advances to suppliers, there are not many such examples in practice. The low incidence of cash or credit advances is attributable to poorly crafted contract terms and conditions rather than to the legal system.

LEASING.

While there is no law that specifically addresses financing leases for agricultural equipment, the Ghana National Accounting Standards (GNAS) Board adopts International Accounting Standards' definition of a finance lease (IAS 17), providing legitimacy for lease instruments. Similarly, GNAS recognizes franchising agreements through adoption of IAS.

CREDIT REPORTING.

The recently passed Credit Report Act, 2007 (Act 726) empowers the BOG to exercise supervisory authority over the establishment and regulation of the credit bureaus. This law provides a clear and effective structure for credit reporting. In the run-up to passage of this law, the government of Ghana placed its and Ghanaian banks' non-performing loans into a trust, valued at \$5.4 million of which about \$2 million was recovered. This large debt restructuring made plain the need for the government to know more about the banks' borrowers and their risk exposures. Banks had been historically slow to share information about their borrowers because of perceived loss of competitiveness if other banks obtained this information. This confluence of circumstances, along with the urging of international financial interests and donors, led Parliament to pass the Credit Report Act.

Credit information may be gathered on both business entities and individuals. The credit bureau begins by collecting negative information on borrowers (individuals

and legal entities) who go into default; it does not collect positive information on borrowers who repay their loans as required. Without such positive information on borrowers, credit bureau ratings of individuals' creditworthiness are not possible, at least in the foreseeable future. Initially, only the commercial banks are required to provide the credit bureau with information on debt performance, but over time credit reporting will need to take place in the S&Ls, MFIs, and rural banks. In some respects, the credit bureau will get information on these other entities anyway, particularly because the S&Ls and MFIs are often borrowers from commercial banks. The information collected on defaulters goes quite deep, including their taxpayer identification number; voter identification number; and eventually their national identity card number as this system gets rolled out.

IMPLEMENTING INSTITUTIONS

As stated above, the law provides for nine types of financial institution in Ghana. Prominent among these are commercial banks, S&Ls, RCBs, credit unions, MFIs, and *susu* collectors. Side-by-side with these financial institutions are a plethora of donor-backed finance and guarantee programs available to Ghanaians, including the U.S. Export-Import Bank (US-EXIM), which in principle should enable banks to take on more risks than they do.

According to one astute observer, politicization is the most important issue that confronts would-be investors. There is a lack of sophistication in the political market that influences the investment market, and investors do not want to be manipulated for political gains or have their investment money put at risk. Party finance is a contributing factor to the role that politics plays in investment markets.

BANK OF GHANA.

The BOG does not intervene to protect the currency, and national monetary policy generally allows exchange rates to be set by market forces. As stated by the BOG, it is "charged with the responsibility of ensuring that the financial system is stable to ensure that it serves as facilitator for wealth creation, economic growth and development." BOG's responsibilities as a regulator are defined in Act 612 and Act 673, and to achieve these objectives the BOG exercises its mandate by:

- Ensuring that depositors' funds are safe
- Overseeing the solvency, good quality assets, adequate liquidity, and profitability of banks

- Enforcing statutory and regulatory requirements
- Supervising fair competition among banks
- Maintaining an efficient payment system

The BOG adheres to a relatively orthodox approach to monetary and banking regulation by establishing the rules of the game and ensuring the soundness of a competitive banking sector.

The Central Bank has removed banks' two-year reserve requirement while increasing their capitalization requirement. The last move is expected to encourage mergers since the sector is viewed as having too many weak banks; three banks dominate the banking sector. The effect of lifting the reserve requirement has been an increase in credit liquidity, while the recently introduced capitalization requirement can be expected to have a dampening effect on some institutions.

As stated above, in Ghana lenders are largely responsible for establishing their own policies and practices for how they conduct business. This independence includes setting their own terms for all types of finance including collateral securitization, trade finance, value chain (e.g., pre-harvest) finance, commodity risk management, and lease finance. As such, the BOG and its financial regulators do not impede agriculture finance, but nor do they actively facilitate lending to agriculture. There are many groups that advocate a more active BOG role in extending the scope of finance, such as the Association of Ghanaian Industries, which advocates that export initiatives be extended to include raw materials suppliers.

The BOG regulates entry of new financial institutions into the sector, including domestic and foreign entities. Entry is not automatic and is more difficult for S&Ls than for commercial banks. One S&L reported that it took five years and 400,000 cedi in capital to register. Geographic distribution of financial institutions is uneven, with relatively few offering services in some northern areas while in Kumasi alone there are eight S&Ls, plus the commercial banks, so competition there is quite intense.

FINANCIAL INSTITUTIONS.

Working capital terms and practices. The general shortage of working capital finance, via lines of credit, accounts receivable, or inventory finance, is a major constraint for most agricultural enterprises, where liquidity is a common management challenge and revenue is seasonal. Most lending by financial institutions is to provide trade finance, usually for high-turnover goods, particularly imported goods. From borrowers'

perspectives, borrowing for such purposes is reasonable given the high interest rates and short credit terms. Perforce, borrowers must be assured of high returns on their borrowed money, and trade finance is the surest means of realizing such returns. In Ghana, borrowers use credit to finance everything from equipment purchases to seasonal wage payments. The difficulty with agricultural lending is that assets are not always easy to convert into cash; hence the importance of working capital. In one illustrative example, an investment's main deterrent was the lack of collateral for the working capital portion of the investment. A few commercial banks will lend against inventory and accounts receivable of select borrowers, but only for trusted customers that have a proven track record. Certain representative lending institutions cited examples of providing working capital, for instance, for farm input credit, but they reported dismal results.

Investment capital terms and practices. While trade finance is obtainable, albeit with unappealing rates and terms, investment capital in Ghana is very difficult to secure. Capital equipment financing is the most constraining factor to agriculture manufacturing growth. First, the commercial banks typically do not finance anything below \$100,000. While this amount of money may not be substantial by international comparison, it is a substantial sum in Ghana. Moreover, the commercial banks' term is generally 12 months or less, which—at 25% or more in interest—is prohibitively expensive for all but the most confident entrepreneurs. The commercial banks area also partial to the agricultural subsectors that they invest in, notably layer chicken operations (not broilers), palm oil plantations, aquaculture, and non-traditional agriculture exports—not staple crops. Very few financial institutions have ventured into financing irrigation schemes, partly because the cost is not trivial and also because of concerns about the uncertain depth of the water table in many parts of the country.

With the exception of most commercial banks, financial institutions seldom have a clear strategy or approach to agriculture. In fact, many financial institutions lack all but the most rudimentary of strategies. For instance, one S&L banker explained that his strategy is to lend exclusively to SME clients focusing on “under-banked” customers, providing loans ranging in size from 100–10,000 cedi. To borrow, a customer must have a deposit account. While this strategy seems fairly sophisticated, it is essentially the same strategy employed by most S&Ls and can be fairly described as a default strategy.

An absence of strategy is also the case for the microfinance sector, which often targets primarily women involved in petty trade—retail trading of consumer goods—but also targets agroprocessors, manufacturers, and artisans. Up to 60% of loans are for trade finance with the remainder comprising investment capital in the retail, merchandise trade, and agricultural sectors, with an average loan term of 3–12 months. MFIs provide working capital loans, mainly for purchase of inputs and raw materials; the amounts are tiny and the institutional risk to such lending is relatively low. Agricultural lending is a fairly small portion of outstanding loans, which mostly finance the poultry sector; centered in Kumasi. Over 70% of a typical MFI loan portfolio comprises petty traders, who mainly borrow to meet their working capital requirements. There is a relative paucity of MFI lending to agriculture, partly explained by the group lending approach that is used and the cost of monitoring borrowers in rural areas. Again, this is practically the default strategy for the microfinance sector.

There are certain noteworthy exceptions to the generally unsophisticated approach to business targeting. These exemplars are showing the way to other financial institutions, although a serious setback could cripple future interest in agricultural lending. Among S&Ls, one leader bases its business model on a form of socially responsible banking that seeks to be transparent, efficient, and sustainably profitable. This S&L is seeking to diversify from a portfolio that is 90% invested in import trade finance by venturing into investment finance and staying away from consumer finance. This shift includes lending to the agricultural sector; which it began investing in about a year ago. Its lending to agriculture focuses on agribusiness SMEs, not on small farmers, avoiding focus on financing particular products or subsectors but rather diversifying its portfolio of agricultural lending across products and value chain segments.

Most commercial lenders require audit records before they will give a loan and the banks know which auditors are good and which ones are bad, taking this factor into account in their lending decisions. According to bankers, if a business keeps proper records and is capable of doing sound financial planning, they will qualify for loans. If a borrower has a choice, it is much better to borrow from a commercial bank than from S&Ls. While some S&Ls manipulate their loan terms to look attractive, they can be extortionate—their interest rates are very high (30–40%), terms short and loans small—but when the loans are annualized their attractiveness declines.

Among MFIs, one leader has long targeted women as its main market segment. The reasons cited for targeting women are: (1) many women in Ghana run microenterprises out of their homes to earn small amounts of cash in support of their families; (2) women often lack the mobility of men and are less likely to abscond; (3) women have proven more likely to repay their loans; and (4) women in Ghana tend to be more entrepreneurial than men. Having initially provided individual loans, the institution transitioned to a mainly group-lending model, referred to as “trust banking,” since members guarantee each others’ loans. Agricultural lending comprises 10–15% of the lending portfolio with an average agriculture loan amount of around 500 cedi.

Commercial banks strategies are more varied than these other financial institutions, though they focus predominantly on the T-bill market where returns are assured and risks are low. Just a few commercial banks lend more than 5% of their portfolio to agricultural concerns. The typical commercial bank expects to target medium to large borrowers. Agricultural borrowers are usually food processors or manufacturers.

Due diligence on collateral and guarantees. Due diligence on borrower creditworthiness is difficult in an environment where records are not kept on the credit histories of borrowers or on claims on assets. The absence of title companies and an asset registry forces lenders to internalize these search costs. Most lenders require one of two types of collateral: (1) a reference guarantee; and/or (2) tangible assets.

Reference guarantees are most common in the microfinance sector where group lending predominates. This system is a means by which lenders are able to obtain information on the past credit history of borrowers. Such guarantors often act as a “co-debtor” who must be willing to sign an affidavit of the borrower’s credibility. For agricultural lending, due diligence often requires that loan officers follow up on borrowers’ references including those individuals whom the borrower does business with, local chiefs, and neighbors. For large loan amounts lenders usually will require a cash contribution in addition to a guarantor. At least one lender is in an enviable position of being able to choose its clients from a deep pool of established borrowers. It has credit histories for a large number of borrowers and is not hampered by asymmetric information. Ultimately, borrowers seek to evolve from group lending to individual lending, which better suits the financing needs of a growing concern.

Banks and financial institutions cannot readily and easily discover whether prior and superior claims exist on a security interest in question. When conducting their due diligence on asset collateral, the commercial banks are most concerned about the level of perfection of the asset: they determine whether there are prior claims, if these claims are senior or subordinate, if there are documented records of any type confirming the status of the asset, etc. Perfecting asset collateral is difficult and time-consuming as there are no title search companies or asset registries in Ghana that could simplify these tasks. Most banks will only lend against perfected collateral. There are frequent problems with multiple claims on assets when banks try to foreclose on loans. If an asset is owned by an individual, there is almost no way to determine if there is a prior claim on it, while an asset owned by a company is usually better documented or other banks may confirm possible claims if necessary. Investment due diligence typically requires that lenders:

- Document the status of the corporate entity involved
- Assess the management team
- Research their prior track record
- Demonstrate prior relevant experience and evidence of market linkage
- Perfect claims on assets

While land is the most tangible and unmoveable of assets, Ghanaian lenders are not always willing to accept it as collateral, observing that securing land assets is too difficult. Assessing the risk of lending against moveable collateral is difficult, on the one hand, because such assets are hard to perfect, and on the other hand, because loan officers generally lack industry-specific knowledge that would enable them to determine the value of such assets. Most staffs in the banking system are generalists, which limits the banks' capacity to provide specialized lending. Equipment can be used as collateral depending upon the sophistication of the equipment and how fixed it is. Low-tech, highly moveable equipment (such as a sprayer) would not be considered as good collateral, whereas a well-equipped storage facility or grain mill would be acceptable collateral. There is a secondary market for subordinated debt for mortgages; on other types of assets, subordinated debt is more problematic and requires documentation, and managers are assigned specifically to investigate such instruments. Trading debt is allowed under the law but is seldom practiced by the banks. There is practically no lending against intangible assets.

Some S&Ls are fairly aggressive in their approach to collateral, operating almost as pawn brokers instead of banks. While they do not take possession of the

collateral, they will not lend money without securing title to the collateral. The borrowers transfer their rights of ownership in these cases. Asset titles are formalized by a combination of assessment, valuation, documentation, and notary. The S&Ls then hold the titles as future claims against defaults. After repayment, the S&Ls will release the titles back to the borrowers. While commercial banks will sometimes cooperate with each other by sharing information on the creditworthiness of particular borrowers, other types of lending institutions do not share borrower information or cooperate in other ways that would be advantageous to the industry overall.

Most lenders treat due diligence on agriculture as a special class of risk. Costs of conducting due diligence pertaining to agricultural borrowers tend to be higher than for other borrowers due to the borrowers' relative remoteness and their susceptibility to uncertain risks. At the same time, agriculture borrowers may have assets that lenders are able to readily lend against, such as vehicles, farm equipment, and inventory. One notable lender is pioneering the use of different types of agricultural collateral by lending against future production, live animals, and other types of sector lending and terms that are not usually easy to secure.

Banks should have better risk-related pricing structures to price loans to borrowers more efficiently. Even solid investments vetted by the government of Ghana do not get financed (e.g., Ministry of Trade and Industry's competition for business ideas). Most investment opportunities are outside of agriculture. Commercial banks are reported to have an average of 5% of their loan portfolios invested in agriculture.

Banks and other financial institutions generally prepare their lending agreements so that they are clear and provide consistent information to borrowers about their obligations, the mechanics of repayment, and the consequences of default. The courts have a track record of carefully scrutinizing loan agreements where there are disputes.

Monitoring/supervision. Lenders' monitoring and supervision of borrowers varies depending on the type of lending institution, whether commercial banks or microfinance, and the type of security—personal guarantee or tangible asset. The loan performance of interviewed lenders appears to be directly related to their investment in borrower monitoring. There seems to be a strong correlation between the number of credit officers employed and loan performance.

MFI monitoring is mainly through reliance on group enforcement mechanisms, although many MFIs' credit officers do independently monitor loan performance. Even when groups are monitored, however, performance is ultimately susceptible to their members' willingness to guarantee each others' repayments. How group repayment risks are monitored by MFIs can seriously impact their lending portfolios. For example, one MFI was profitable until this year at which time it was forced to recalculate its portfolio at risk (PAR). Under its former calculation, the MFI calculated PAR on the basis of individual group member risk. After catastrophic floods and other one-off events last year, many groups refused to guarantee each others' loans, leaving the MFI with a high percentage of defaults and the need to reassess its PAR using the whole group as the basic unit of risk versus the risk of individual member defaults. Besides the floods, the "one-off events" were the consequence of poor group due diligence by loan officers who apparently were not trained sufficiently and did not monitor borrowers very well. This experience suggests that group guarantees are difficult to enforce within a community. Nonetheless, as of July 2008, this MFI had written off just 0.1% of its portfolio.

Commercial banks, rural banks, credit unions, and S&Ls rely much more on their own loan officers to monitor borrowers' performance. Further, they are more cautious than MFIs in their lending practices, particularly the commercial banks. None of the lenders interviewed make loans to farmer-based organizations (FBOs). The main reasons given is that the lenders cannot monitor FBOs effectively and farmers are usually too remote to monitor well. With respect to lending to FBOs, it is difficult for loan officers to judge who in the group is responsible for repayment, where the liabilities are, and so forth. Typically FBOs do not have bylaws so lenders end up having to rely on the reputations of individual members. FBOs do not generally own assets; rather, they usually operate semi-formally and often lack organizational bylaws that describe members' roles and responsibilities, and free-rider problems are inherent in such organizational structures. (For further discussion of the underassumed potential of FBOs, see this report's chapter on Protecting Investors.)

Farmer monitoring is likewise a constraint for agricultural-sector lending; monitoring costs are high and loan officers are not familiar enough with the sector to monitor it effectively. One lender recommended that improving mobility within Ghana could help lower lending costs, e.g., by making roads more accessible to motorcycles.

SMEs, including farms and rural enterprises, do not have equal access to loans in comparison to large companies and multinationals. Few lending organizations target the large grower and small processor segments of the market as these farmers' credit needs tend to be too small for most banks but too big for MFIs.

Defaults and foreclosures. Default and foreclosure are far from being automatic processes and usually consume considerable resources, though there are widely varying approaches. At one extreme, as mentioned above, are some of the S&Ls that take title to an asset before loan disbursement, which facilitates rapid foreclosure. For banks, which often have their reputations at stake, such an approach is difficult. The banks and most other lending institutions must foreclose through the legal system. Until recently, borrower default did not have consequences much wider than their relationship with their lender. Once the Credit Bureau is fully operational, probably in early 2009, defaulters' information must be sent to the Credit Bureau. Historically, defaults took too long to wind up—three years or more.

Usually when a borrower defaults, a lender will rollover or restructure the loan and will seize assets only if it must. Temporarily stopping a borrower's business operations has been an effective means of getting repayment because of the stigma it poses for delinquent borrowers. One bank officer stated that although the bank has not gone through insolvency proceedings in the Commercial Court, "the Bank prosecutes defaulting borrowers all of the time."

Courts are a last resort given their track record of being slow and unpredictable and not withstanding the recent improvements mentioned in the Enforcing Contracts chapter of this report. There are no alternative dispute mechanisms available to banks (or any other businesses). The relative slowness of the court system has an effect of increasing interest rates—or so the banks suggest. The newly established Commercial Court system has been used successfully by some banks and is said to be promising. One caveat to using the Commercial Court is that prosecutions must be greater than 5,000 cedi to fall within the court's purview. Foreclosure, once initiated, takes about 90 days, but the court requires that banks prove they have made every possible effort to work out the loan. The Commercial Court requires alternative dispute resolution prior to trial, and sometimes this is indeed the best way out of a bad loan.

In the event of default, the more aggressive of the S&Ls repossess and auction the assets, which they can do swiftly since they already hold title. If the asset auction does not raise sufficient capital to repay the loan, the S&L may go after any guarantors as well (usually family members). By being highly aggressive at prosecuting default, the S&Ls essentially signal to prospective borrowers the risk that they take on by doing business with them. Some S&Ls train their borrowers in lending, application, and repayment procedures.

Cascading funds. The Ghanaian financial sector may be susceptible to cascading effects of default in the banking system. Commercial banks lend to S&Ls and MFIs, which in turn lend to farmers. One S&L reported that it obtains most of its money from the commercial banks, borrowing at 28% and lending at 36% which does not provide much of a margin for default. The relationship is strictly business as commercial banks do not receive tax breaks or other benefits from lending to S&Ls or MFIs. The commercial banks seem to appreciate their exposure. An S&L claimed that it has over 6,000 clients and could have more except that it is limited by its own capital constraints, being unable to borrow beyond its current line of credit. Another source of capital is government social investment funds that lend at the prime rate but require full repayment after 12 months. These funds comprise a substantial portion of the capital of some institutions.

Meanwhile, local *susu* collectors deposit farmers' savings into banks. The MFIs have no relation to the *susu* system. *Susu* collectors receive money from depositors; MFIs cannot accept deposits and *susu* collectors cannot relend this money. These *susu* collectors aggregate very small amounts of cash from large numbers of depositors to put away safely in the bank. The *susu* collector typically deducts one day per month of the monthly deposited amount as a commission. One of the commercial banks has tapped into the *susu* system by extending credit products through the *susu* collectors. There is a risk, however slight, that if one of the banks at which *susu* money is deposited goes under, there would be severe consequences for the mostly poor depositors.

Trade finance. Trade finance for imports is relatively available; export finance is not. There is not an EXIM bank equivalent and banks have low level of familiarity with export finance and documentation (letters of credit, etc.). When engaged in trade finance, banks look for quality assurance from borrowers—certification or some type of assurance that a transaction will be completed.

The Export Finance Company (EFC) was established by the government to finance companies engaged in export and to implement the government's export policy. The EFC's business, however, has been relatively insignificant. One of its problems is that Ghana is an importing rather than an exporting country. The EFC experimented with financing perishable crops, but this proved unprofitable; the company now provides export finance for more stable products such as canned tuna, groundnuts, medicinal seeds, smoked fish, garments, wood products, and scrap metal. Financing of agricultural exports is made difficult by the lack of crop storage facilities, particularly near the ports. In contrast to many countries that export agricultural goods, in Ghana the use of letters of credit as collateral has been limited. Such collateral is usually insufficient guarantee and exporters must pledge other assets. Export finance consists mainly of pre-shipment credit and a small amount of post-shipment credit. The dual objectives of financing exports and implementing export policy have not been compatible.

Technology. One stakeholder consulted during this diagnostic noted that lending operations are getting better thanks to the availability of improved information technology as well as new agriculture technologies. Offsetting these new technology-related advantages, however, are the forces of liberalization and globalization. Financial innovation is making in-roads in Ghana, too. For instance, one MFI now provides new services in support of its lending operations; these services include "cash collateral" and micro-insurance. Several innovators have started to offer Internet remittance services, for a slight fee, to overseas Ghanaians who want to transfer money to family in Ghana.

Value chain finance. Value chains are financed via lending institutions and through non-bank finance. The most traditional recipient of value chain finance in Ghana has been the cocoa subsector. Historically, the Agriculture Development Bank (ADB) was the key financial institution. For the ADB, cocoa value chain finance was a relatively low-risk activity. The ADB employed what it called the "check system" where it deducted farmers' borrowings from the Ghana Cocoa Board's (GCB) payments to farmers. The check system was discontinued for being notoriously late in providing loan money and for the aggressive pricing of loans. Whereas the pass-books under this system meant that cash did not change hands, now every cocoa sector transaction involves cash. Farmers now must pay off their loans directly, which the

farmers do not always feel obligated to do. Every farmer's cocoa continues to be sold through the GCB. Still, farmers must be self-financing, although they get a starter package, including seedlings, at a subsidized price. Farmers can often get financing because they have a guaranteed price and market. Despite the failed check system, many Ghanaians view the cocoa sector as a model for value chain finance.

A distinct model of value chain finance is the nucleus-outgrower model. Banks are gaining experience lending to nucleus farmers who are part of nucleus-outgrower schemes. Their experience with this model has been positive, and they increasingly prefer to lend to borrowers under such arrangements. Banks prefer this model because the nucleus farm can act as a guarantor of farmer credit. Favorable experiences with nucleus-outgrower schemes have also emerged in oil palm and rubber. The oil palm example is interesting because it began about seven years ago with French and German assistance and has successfully transitioned to commercial viability. Some lenders report that they are leery of investing in fruit processing because these subsectors have not been able to increase their volumes for the last 15 years.

In the outgrower schemes, farmers seldom touch the money; rather, lenders finance the inputs and collect loan repayments from crop sales, distributing profits to the farmers. The attraction of nucleus-outgrower finance is that there is an assured market, an identified buyer, and transactions are secure. Guinness is cited as an example of a nucleus-outgrower scheme that is working well in the sorghum sector. Banks' arrangements with Guinness are to provide joint payments to farmers where farmers' loan repayments are deducted directly and routed to the banks. For such value chain finance to be sustainable, bankers observe that product volumes have to reach a critical mass sufficient to fill the quotas of large buyers. Some bankers have urged that government should play a more active role in setting and enforcing product standards as a means of lowering reputation risk of Ghanaian suppliers.

A typical approach to extending value chain credit is for a bank to disburse credit on a cash and in-kind basis; e.g., 20% in cash is disbursed to a (outgrower) group account to pay for labor and transportation of inputs, and the balance is paid in kind by the buyer (nucleus farm) using a voucher-type arrangement in which the buyer issues the outgrowers a signed invoice for products received. The outgrowers present this invoice

to the bank, which then deducts the outgrowers' outstanding credit from their payment and issues the outgrowers the balance.

A notable few financial institutions will securitize crops provided (1) there is a proven market and (2) there is a charge at purchase so that the buyer disburses payment to the lender directly. Proceeds "need to be tied as far up the chain as possible," according to a lender we spoke with, and the whole chain of transactions needs to be documented. Agricultural value chain lending is contingent upon:

- Lenders' ability to work with the local authorities, which differ from place to place
- Borrowers' plan for technical assistance—banks often look for some donor provision
- Registration of the next of kin so that there is continuity over the life of the investment, since many of these investments involve tree crops; such registration is another type of guarantee.

Non-bank finance. Non-bank, value chain credit is sometimes available through input suppliers or raw material buyers. The experience of non-bank finance providers has been distinctly mixed; on the input side, many providers reported substantial farmer non-payment, while on the buying side, lending against contracts is constrained by farmers' side-selling of crops. While evidence is limited, there does seem to be a relationship between the size of the commercial operation and the likelihood of repayment. If perception does match reality, it is unfortunate for small farmers.

In some cases, commercial companies in agricultural development working with Ghanaian small holders as outgrowers are extending seasonal credit along with technical assistance in production and crop maintenance. Several examples include:

- The Integrated Tamale Fruit Company (ITFC) mango export "nucleus farm" in the north
- WEINCO outgrower schemes in cocoa and maize
- Savannah Farmers Marketing Association in Tamale, an offshoot of the ACDEP (Association of Church Development Projects) NGO.

Models used by these private sector operators indicate that they are making progress in transferring technical skills with in-kind inputs to smallholders at or just above subsistence level, introducing them to crop diversification for cash markets (increased income and risk mitigation), and improving their capacity to run agriculture as a business.

Pioneer Foods is an example of a company that has successfully pre-financed some start-up fishing companies, taking its principal and interest payments out of its purchases from these companies at the point of sale; these companies are now independent. Pioneer Foods is a leader in other regards: where industry norms are to pay suppliers within 60 days, Pioneer Foods pays its suppliers 95% upon delivery, which allows fishers to buy gas and other equipment immediately after sale and head quickly back out to sea, essentially pre-financing their operations. Pioneer Foods also provides lines of credit to vessels that are coming ashore to cover dock clearance and related fees. They know their suppliers very well and are comfortable with such non-bank financing.

Would-be buyers, who lend credit or inputs to farmers, do so with the intention of recouping the investment at harvest. Typically, such transactions involve contracts in which there is a pre-agreed price. This arrangement works well enough when crop prices are low, but it works less well when prices are high and farmers face a substantial discount from the market price. Ghanaians' experience suggests that farmers decide whether or not to honor a contract at the point of sale. This determination is made based on the difference between the price negotiated in a contract and the price offered by another buyer. If there is even a slightly higher price, farmers will defect from the contract and sell to the other buyer. Some buyers assert that, because of the inefficiency of the court system, farmers face no consequences for such behavior. There have recently been successful experiments with introduction of "re-marking" clauses in such contracts whereby product prices are benchmarked to reference prices on offer in an agreed market. If these reference prices are more than a pre-agreed percentage of the contract price the product will be repriced at a higher rate relative to this market. Lenders would like to see such clauses in more of their borrowers' contracts with farmers. The poultry sector is an example of one industry where pre-set prices of raw materials have failed. Conversely, cocoa processors buy cocoa at the FOB (freight on board) price of the London Exchange.

Some organizations finance inputs to farmers in certain value chains. Large wholesalers—which are usually able to access bank facilities to do their business—have been channels for stimulating start-ups or expansions of small retail dealers in various districts. An example is Agrimat, a medium-scale wholesaler in Madina

(Greater Accra) that has assisted some 60 retailers to establish their businesses in various districts in Ghana, and is expanding its network in the Eastern Region. Wholesalers provide initial inputs to and resupply small retailers and, once the retailer is established as a reliable payer of inputs for cash, provide inputs on short-term credit (60 to 90 days, up to five months). Wholesalers also provide business analysis and technical assistance with marketing and sale of input products as a part of the supplier relationship. Small retailers are key actors in getting appropriate inputs, with advice on their application, to farmers in more remote rural areas.

Other financial intermediaries. MCC key findings show that existing non-bank financial intermediaries (NGOs and nucleus farmers) and rural banks are making loans to small farmers in selected regions as follows:

- Loans are made to farmers in self-formed groups (average 10 to 15).
- Credit is provided in kind in the form of inputs, with a small cash portion for farmers to pay for field preparation and seeds.
- Loans through donor programs and MFIs are usually "secured" using a "group warranty" or joint and several guarantees that all members will repay if one or more members default, while banks have avoided such group lending.
- Under such programs, groups are required (or encouraged) to open a group bank account, into which loan proceeds are paid and out of which the inputs loan is expected to be repaid.
- Under the nucleus farm model, the nucleus farmer and bank provide joint payments to farmers where farmers' loan repayments are deducted directly and routed to the bank.
- In-kind credit is usually accompanied by technical assistance to farmers on improved agriculture practices that will meet the minimum market requirements of targeted markets.
- Loan terms are from four months to one year, depending on nature of the crop and storage time needed to realize price rise.
- Interest is in most cases at market rates, using the BOG rate or a bank's baseline rate plus margin covering operating expenses, LLR, and profit.

These discussions further indicate that lenders to the small-farmer sector have learned and applied some lessons in terms of designing and disciplining seasonal production credits:

- Lending has to be done with self-selected groups of farmers, made up of growers working to intensify the same crops for cash sale and willing to work with each other.
- Due diligence needs to be done on groups prior to the decision to lend.
- Among farmers in higher-risk growing areas (e.g., much of the north), loans are more likely to be repaid if made for the intended cash crop but there is cash flow from at least one other crop (so that one crop failure does not jeopardize ability to repay).
- When lending to subsistence farmers trying to intensify production of one or more crops for cash sale, there will be a need for a cash portion for field prep, seeds, and sometimes harvest labor, as well as in kind for inputs such as fertilizer, insecticide, and herbicide.
- Loan terms need to accommodate the growing season as well as several months storage (referred to as “inventory” or storage portion of the loan term).
- On-time repayment by all members will require more than a group warranty, e.g., FBOs need to make a joint deposit investment in their financing.
- If subsistence farmers are going to get ahead financially and gain access to larger markets for cash crops, the lending approach has to be combined with assistance in accessing markets.

There is a significant level of FNGO-extended small-farmer credit in many regions at the level of numbers of groups and farmers reached and credit outstanding. These FNGOs are reaching FBOs and savings and credit groups engaged in smallholder agriculture that are not duplicative of the FBOs reached by the nucleus farmers or by the lead Agriculture Bank.

The profile that emerges from interviews with FNGOs indicates that they are extending seasonal credit to farmers and small agroprocessors in FBOs or savings and credit groups (village banks). The typical loan product is the following, with minor adaptations as regards required savings:

- A loan to a group of average 20–30 borrowers, which are engaged in mixed farming and producing similar crops (maize, yams, groundnuts, vegetables, rice, and sorghum for cash sale), on farms of average 2–5 acres (1–2 hectares) or are doing small-scale agroprocessing
- Secured with a “group warranty” as part of the loan contract, or joint and several guarantees of repayment

- Extended at a market rate of interest for loan terms of six months to one year, depending upon crop and storage time needed
- Borrower is a farmer group that has been pre-screened by the FNGO working in some cases with the District Agriculture Extension Officer
- Group is in some cases required to make a cash deposit of 10–20% of the loan amount in a group bank account, to be used if necessary for curing defaults.

Some of the FNGOs provide the loan in cash and others in kind in the form of inputs. Loan recovery rates under such schemes have been generally good (95–100%). This is attributed by program managers to several factors, including the use of the group warranty, group-owned cash deposit, and careful screening prior to credit extension. Another factor is continued dependency upon the lending organization for credit (in kind or cash). These FNGOs are for the most part using cash flow analysis as their basis for sizing and extending the group-based loan.

SUPPORTING INSTITUTIONS

Agricultural organizations generally do not work closely with the formal financial sector to encourage the extension of agricultural credit terms that are appropriate both for the lenders and for the borrowers. In fact, there seems to be a “disconnect” between agricultural organizations and the formal financial sector. Banks do not seem to have a good understanding of sector risks and agricultural organizations apparently are not able to help the banks determine which loans are safer and which loans are more risky. For example, banks are not financing irrigation, partly due to the perceived risks. Such reluctance to lend to irrigation investments is disadvantageous since irrigation investments typically have some of the highest returns to any investment in agriculture.

There are essentially two types of finance that industries need: (1) working capital and (2) investment capital. The top limiting factor to the growth of agribusiness industries (of all sizes) is their lack of investment capital and their poor access to agricultural finance or lines of credit for working capital. T-bill returns are so high that many banks are discouraged from lending; they can make decent returns without the risk of borrower default or the high transaction costs involved in agricultural lending. Interest rates are correspondingly high, with the current rate for farmers approaching 30% with terms of not more than one year.

KEY IMPLEMENTING INSTITUTIONS

- Development banks (3)
- Universal banks (9)
- Merchant banks (2)
- ARB Apex Bank
- Rural and community banks (121)
- Commercial banks (8)
- Savings and loans (12)
- Credit unions (273)
- Financial NGOs (29)
- *Susu* collectors

Agricultural lenders state that among the important constraints to agricultural lending are:

- Agriculture is mainly rain-fed so there are considerable weather-related risks.
- Input supply failures are common and for many, often complex, reasons, farmers have uncertain access to inputs.
- Irrigation is expensive and requires some type of assistance to overcome this perceived failure of markets and government.
- Crop storage capacity is very low and is beyond the capacity of smaller financial institutions to finance given the sizes of loans required.

Conversely, agricultural borrowers complain that the lending process is so cumbersome that loans are not timely. The process seems to be especially burdensome for agricultural-sector borrowers because of the substantial amount of asset documentation that lenders require. Borrowers must produce evidence of their claims on assets, which frequently they do not have, and once a claim is secured lenders will require the borrower to transfer title of this claim to the lender, which adds a further burden. Although most loans are for 12 months, all parties realize that there is the possibility of rollover at the end of the term, since many loans end up in difficulty and this avoids restructuring.

Rural banks cite the main risks to agriculture lending as:

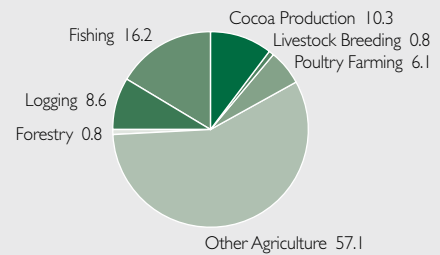
- Weather risk due to the frequent late arrival of rains in an area with one production season
- Lack of means of irrigating maize and vegetables (primary cash crops) from reservoirs to farms, in an area where large volumes of vegetables are grown
- Lack of good roads to get perishable vegetables to markets
- Lack of markets for cash crops outside the immediate area (market risk)

- Repayment risk due to weather, markets, and historically low rates of repayment under MoFA-directed credit schemes to farmer groups.

CREDIT BUREAU.

Ghana's first credit bureau, XDS data Ghana (a South African/Ghanaian joint venture) should be operational by the end of 2008 or the start of 2009. Initially, the BOG intends to license no more than three credit bureaus, although just one is currently licensed. Banks will have access to borrowers' negative information, for a fee. Other lenders and non-banks will also have access to these credit records. Another credit bureau has submitted an application for a license. Information will be provided by the 26 commercial banks and, over time by the 127 rural banks. Bank numbers will surely change as there are new applications to establish banks and the recently increased paid-up capital requirements (from 7 cedi to 60 million cedi) will probably force some mergers.

AVERAGE SHARE SUB SECTOR OF AGRI CREDIT (IN PERCENT)



The newly established credit bureau is expected to reduce information asymmetries by providing lenders with records of borrowers' creditworthiness. Any borrower who is in default for 180 days or more will have their records sent to the credit bureau. So far, only negative information on borrowers is collected by the credit bureau; it does not collect positive information on borrowers' credit histories. Banks do share informally information on client credit histories via "bankers' opinions."

The commercial banks are required to report to the credit bureau all borrower defaults. This information must be reported within 90 days of default, but the banks must first give the borrowers a fair warning of their intent to report a default after the borrower has been in default for 28 days, except in the case of fraud where reporting must be immediate. Banks have been reluctant supporters of this regulatory change and advocated successfully against their having to provide positive information to the credit bureau(s). As it is,

banks now submit quarterly reports to the BOG on the "50 most adverse" borrowers and on their "20 largest exposures." This information is not shared by the BOG. It is somewhat surprising that the banks have not been more enthusiastic supporters of an initiative that should lower their overall risk.

So far as the agricultural sector is concerned, due to farmers' small size they are unlikely to be touched directly by this new system, although they will be affected indirectly to the extent that they borrow from institutions that are financed by commercial banks. Eventually credit reporting requirements will be extended to second-tier lenders who will then establish such clients' credit histories, over time affecting their borrowing rates. Sectoral distribution of loans, where agriculture is below 10%, also suggests slight effect on agriculture borrowers.

KEY SUPPORTING INSTITUTIONS

- Ghana Microfinance Institutions Network (GHAMFIN)
- Credit bureaus
- Donor and other finance agencies
- Farmer-based organizations (FBOs)
- Trade finance suppliers
- Insurance companies (18)
- Agriculture-based and rural-sector savings and investment instruments
- Social Investment Fund
- Micro-Finance Small Loan Center (MASLOC)
- Ghana Cooperative *Susu* Collectors Association (GCSCA)
- Ghana Cooperative Credit Union Association (CUA)
- Association of Financial NGOs

Lenders view the main risks to success of this new credit bureau system as being: (1) the bureaus are only dealing with negative information, (2) patronage, (3) bureaus' lack the right of inspection, which is with bank examiners, and (4) bank cooperation. To combat patronage in particular, the credit bureaus must establish their credibility by being seen to be "clean and above-board"; how information on favored borrowers is handled will be the key test.

GHANA MICROFINANCE INSTITUTIONS NETWORK (GHAMFIN).

The microfinance industry has its own version of a credit bureau. GHAMFIN is an informal network of institutions and individuals that operate within Ghana's microfinance industry. GHAMFIN's mission is to

coordinate and support the activities of MFIs with a view to promoting the development of an efficient and sustainable MFI industry in Ghana. While not a credit bureau *per se*, the "rating" GHAMFIN gives to member FNGOs depends upon what type of data is sent from the FNGO. This is usually raw data on recovery rate and PAR, because GHAMFIN relies upon audited financial statements of their member NGOs. In Ghana auditors typically only audit the income statement and balance sheet, and do not provide a portfolio analysis (the basis for PAR). Thus, the recovery rates and PARs reported have not been audited in most cases. In fulfillment of its sectoral role, GHAMFIN:

- Maintains a comprehensive database on MFIs operating in Ghana
- Undertakes advocacy on behalf of its members
- Undertakes research and disseminates information on the microfinance subsector in Ghana
- Collaborates with other microfinance apex organizations

GHAMFIN functions further as the representational body of the microfinance industry in Ghana; as such, it supports the industry through (1) policy research and advocacy, (2) industry capacity-building, (3) MFI performance benchmarking, and (4) best practices dissemination. In some respects, GHAMFIN is an apex organization of apex organizations, as represented by each of the five categories of MFI.

As an aggregator of information on lenders and borrowers, GHAMFIN plays a central analysis and clearinghouse role. Yet its capacity to fulfill this responsibility is only as good as the information that it gets from its members. In this respect, GHAMFIN's potential is curtailed by lack of effective reporting. For instance, GHAMFIN cannot calculate what percentage of total financing that microfinancing represents; the Bank of Ghana does not have this information either. In fact, no one knows how much money is being lent by MFIs and it is not certain what Ghana's exposure is to microfinance. Moreover, GHAMFIN is not able to disaggregate lending by sector, by productive activities, such as agriculture, mining, etc., nor by urban/rural dichotomy. The government of Ghana should have an interest in better reporting of disaggregated microfinance lending. GHAMFIN does collect and analyze data by type of lender (i.e., S&L). Despite the dearth of information on microfinance lending, there is not much risk that a pyramid will form, at least not in rural areas where monitoring microlending activity is possible. In urban

areas, there are some monitoring problems as groups have been going from bank to bank to borrow money from one to pay off the other.

Among the issues that GHAMFIN tracks are actions by the Bank of Ghana to close down MFIs that have been accepting savings. Specifically, some MFIs require compulsory savings from their borrowing clients as a token or partial collateral guarantee.

Other recent concerns include:

- Lack of access to financing since most MFIs are not able to tap into the commercial banks and so are heavily dependent on the social investment funds and welfare-oriented donor programs for funding
- Variable lending rates, even within the same community, that are driven by too many donor and other funds; such discounted rates, sometimes lower than the Bank of Ghana rate, cause distortions in the microfinance market
- Lack of professionalism in the microfinance industry, caused in part by commercial banks' cherry-picking of the best staff; MFIs spend inordinate amounts of time and money to train staff, which often turns over at a high rate.

DONORS AND OTHER SOURCES OF FINANCE.

There are reportedly seven established Ghanaian NGOs that extend seasonal production credit to small farmers using group-based products. These NGOs include Freedom from Hunger (working through rural banks); APED (World Vision) and GECLOF (Evangelical Church Organization), in the SHB, northern region, and Afram Basin; and the Ghanaian Danish Community Development Program (GDCCP), Maata NTudu, and ACDEP (Danish agriculture development program), which are working in the north. These FNGOs have all been started with donor seed finance but in each case have grown independently, though not without some continued support. As lenders, they agree that the traditional donor "give money to farmers model" does not work. As organizations that obtain funding from donors, they complain that information and reports should be simple; often donors' reporting requirements are too detailed and prohibitive to some borrowers.

One MFI now has more than 62,000 borrowers and has garnered international recognition as a top-tier MFI. Planet Rating, a provider of international MFI ratings, has given this MFI an investment grade rating, paving the way

for recent capital market acceptance by such banks as JP Morgan Chase. The MFI has also attracted venture finance from an international venture fund. This institution works effectively with donors and international NGOs to ensure that its credit is timely with respect to cropping seasons. The group's interest rates are among the lowest of MFIs because of its access to international financial markets, and it is able to lend for as low as 18%.

FARMER-BASED ORGANIZATIONS (FBOS).

FBOs and grower associations mostly lack knowledge of financial instruments and what types of instruments might be appropriate for their businesses. They do know, however, what financial terms and conditions are appropriate. Among the important factors they cite are:

- Interest rates are prohibitive.
- Collateral is difficult to document, presumably because there are sometimes outstanding claims on it; types of collateral that can be used vary and include land titles, house deed, vehicles, farm equipment, and sometimes animals.
- Bankers do not understand their businesses, particularly since the Agriculture Development Bank has retrenched its operations (although one S&L has recently started to fill this void in the market).
- Farm suppliers seldom offer lines of credit for inputs and farmers often have to pay for raw material supplies in advance.
- Credit for inputs, when it does arrive, is seldom in time for the start of the growing season.

FBO members frequently use other members as guarantors for their loans, which is among the most important membership benefits. FBO training for associations is haphazard and inconsistent. It is haphazard because availability of training programs often depends on which donor programs are operating in an area and whether the members are aware of the program. Banks and S&Ls sometimes provide training but such training usually covers the most rudimentary aspects of the financial system or of the particular institution—how to make a deposit, how to withdraw cash, and how to apply for a loan. Training is inconsistent because the quality of programs is highly variable; some programs receive praise while others are derided, and it is difficult for members to know a training program's utility in advance.

TRADE FINANCE SUPPLIERS.

Since credit risk insurance is not generally available, agricultural exporters are unable to secure their credit risks. Assistance in developing letter of credit (LOC) terms with existing export customers is available to just a narrow group of exporters. Banks generally do not lend against LOCs for exporters but will lend for importer LOCs. Banks involvement in the agriculture export sector is narrow at best, explained partly by the small number of agriculture exporters (besides cocoa) and partly by their lack of interest or capacity. Hence, trade finance instruments (i.e., cash and foreign exchange instruments) that could facilitate exports are not widely accessible. Banks will lend against the supply contracts of companies that have high-quality buyers, so that a company like Pioneer Foods can borrow against its contracts with European canned tuna distributors.

CROP INSURERS.

Insurance for crop production is almost non-existent, while insurance for crop shipment is available though prices are reported to vary considerably. Insurers require a license and it is possible to insure most types of collateral if a commercial bank is involved. Microinsurance is often compulsory, requiring that clients participate in a "client welfare scheme" that insures borrowers from commercial and some personal risks such as fire, floods, injury, etc. This microinsurance is added to the loan premium at 2% of a loan's value. This microinsurance has been so successful that the lender is offering the product to other MFIs through Opportunity International's Ghana operations.

AGRICULTURE-BASED AND RURAL-SECTOR SAVINGS AND INVESTMENT INSTRUMENTS.

Banks, credit unions, and MFIs frequently provide a variety of financial services including credit, savings, and—less often—insurance to the agricultural and/or rural economy. Borrowers complain, however, that finance is not appropriate for the needs of agriculture. Agricultural finance should differentiate investment capital from working capital; banks' terms are typically not appropriate for investment finance insofar as terms should mirror the crops that farmers are growing (number of growing days, seasonality, rainfall, etc.). Banks should also tailor lending to value chain segments (transportation, refrigeration). Banks could usefully explore the profitability of such niche financing opportunities.

Quick, low-cost loans are provided by the formal banking sector to agriculture and rural-sector communities. Lenders will extend lines of credit (30 days) to borrowers in good standing, which in turn enables such borrowers to extend credit packages to farmers. Such packages include seed, chemicals, and occasional technical assistance and training in the proper application of specific chemicals.

According to World Bank analysis, without capital to finance intensification, farming will continue to be expansive, resulting in the depletion of the natural resource base and failing to achieve productivity gains required for sustained growth. While agriculture's contribution to the GDP is 35% as stated above, its share of total institutional credit is less than 10%. Farmers' own equity for investment is very limited. Rapid agriculture growth will require that financing of agriculture, especially in the medium and long term, is available at reasonable cost.

SOCIAL DYNAMICS

ACCESS TO CREDIT.

The recent history of agriculture growth in Ghana indicates that it can in fact support value addition for key export and cash crops through increasing small holder access to credit, irrigation, market information, research, and technologies. The cocoa and horticulture subsectors are areas where coordination and value chain consolidation have resulted in significant improvements, even for small holders. A key factor has been the increasing focus on organization of smallholder groups who can coordinate better to access key inputs and markets.

Credit is just about the only viable means of leveraging available to agribusiness enterprises in Ghana. The Ghana Stock Exchange has 34 members, due to the small number of firms that have sufficient value to make the cost of listing worth the investment, so capital market equity is not generally an option for raising capital.

Across the board, access to credit remains a constraint to farmers, even when they are formed into groups. There are certain benefits, however, which are now becoming evident to these groups. For example, the tractor leasing or hiring scheme initiated by the Ministry of Food and Agriculture through the districts is more affordable by a well-functioning farmer group than by any one smallholder. These groups are also finding it possible to access credit from rural banks under donor-supported programs.

One local investment bank, investing money on behalf of its clients, has invested very little in agriculture because of the perceived risk and also because its staff lack specialized knowledge of the sector. The usual list of disincentives keeps the bank out of agriculture: too much risk exposure, weather risks, small loan sizes, too few large commercial interests, land tenure, and poor prospective returns. To even consider investing in agriculture, this investor needs assurance that land tenure is secure or that there are progressive chiefs who are willing to document their intentions.

BORROWER KNOWLEDGE OF THE BANKING SYSTEM.

There is a lack of farmer knowledge and banking experience. Lenders report that farmers “don’t know how to be good borrowers” and their experience has largely been of government loan forgiveness. Further, they do not know how to work effectively as investment partners. The challenge that rural banking faces is to get farmers to understand how credit works. At the enterprise level, when lending to a new borrower; banks are not so interested in seeing the audited books of the company. Rather, they prefer to see an investment’s financial plan and profitability statement so that bankers can see from where they will get their repayments. Borrowers seem to have trouble understanding this as the bank has issues with inadequate financial forecasts and business plans.

SHARECROPPING.

Formal lending to sharecropper-farmers is almost non-existent. Sharecropping systems somehow need to be formalized to bring these farmers into the formal legal system and eventually move them to lease holdings. These systems are Abunu, the 1:2 system, whereby the landholder provides some inputs and takes one-half of the farmers’ production in payment, and Abusa, the 2:1 system, whereby the landholder provides no inputs except an allotment of land and one-third of the farmers’ production is made in payment. Since these two systems are informal, the transactions fall outside of land tenure, contract, finance, and other laws. Farmers’ land under this sharecropping system can be transferred as what is known as “conveyance by decree.” Many lenders will not consider making loans to would-be borrowers who hold lands “conveyed by decree” until this informal conveyance is formalized under the relevant lease registration. The sharecropping sector is largely unbanked.

VALUE CHAIN FINANCING GAPS.

MCC field assessments recently verified that there are three major gaps in the food and horticultural value chains where stakeholders are presently unable to access the amount and kind of credit needed to generate a vigorous supply response and take advantage of growth opportunities in this expanding agriculture based economy. These are:

- Smallholder farmers that are operating at or just above subsistence level and trying to intensify production of food and horticultural cash crops, and reach markets that will enable them to sell at higher prices
- Retail suppliers of agriculture inputs and small production equipment that could bring inputs closer to the small farmers in underserved areas, but lack access to working capital to start up or expand stock
- Storage facilities that satisfy the demands of market aggregation, as an estimated 20–30% of farm production is lost post-harvest.

Banks usually do not provide loans for the full amount requested by potential borrowers, for a variety of reasons, so oftentimes potential borrowers will have to find creative ways of raising capital such as tapping into the various donor funds that support SMEs. Raising capital in this way requires time and considerable knowledge of the funds on offer; information that few entrepreneurs have. There are organizations that will help such borrowers to source different funds including donor grants.

AGRODEALER ROLE.

Agrodealers will sometimes act as lenders, notably those that are benefitting from a fertilizer subsidy. Under this subsidy scheme, MoFA district offices issue coupons to farmers for the purchase of fertilizer. This coupon enables farmers to buy fertilizer at the price of 26.20/kg cedi; the unsubsidized fertilizer price is approximately 50/kg cedi.

Agrodealers have some loan repayment problems. These defaults force agrodealers to do business with farmers who can provide guarantors. While farmers may default, it is usually on a portion of the loan and not the loan in full; they will make partial payments. Nonetheless, this business approach is costly and agrodealers have been discontinuing the practice.

The legal framework provides for the equal treatment of foreign investors. Some people argue that laws in particular are quite favorable for foreign

direct investors, almost to the disadvantage of Ghanaians. On the other hand, some Ghanaians suggest that there is not great potential for foreign investors in the agricultural sector because “Ghana’s terms of trade make agriculture a poor investment.” Percentage wise, there are not many commercial farmers that have the capacity to be reliable suppliers to agricultural manufacturers and exporters, which means considerable reliance on processors/exporters’ own production—requiring land—or on small farmers.

RECOMMENDATIONS

- Create a more precise legal basis for moveable, immoveable, and intangible agriculture assets as collateral, which would facilitate the establishment of title companies and asset registries.
- Extend the Home Mortgage Finance Law [PNDCL 329] 1993 to all types of mortgages, not just houses.
- Enact a law specific to secured transactions to provide quick, inexpensive, and simple creation of a proprietary security right. The key banking laws are silent on both “secured transactions” and, more generally, “collateral.” There is no law that specifically addresses secured transactions, either traditional or non-traditional.
- Improve lenders’ access to information and documentation on titles and claims. There are some efforts said to be under way to improve this situation, but this seems to not be coordinated and lenders do not know the status of any such programs. An asset registry, which would enable lenders to establish the priority of claims on an asset, would be particularly helpful for both moveable and fixed collateral.
- Introduce “re-marking clauses” to encourage the use of reference prices more widely, so that a final contract price does not diverge too much from the market price and spur farmers to defect from their contracts. By improving the observance of contract terms, lenders will be more willing to provide value chain finance.
- Expand the credit bureau’s remit to include collecting positive information on borrowers to provide all lenders with an indicator of their creditworthiness. As the situation now stands, lenders only have access to negative information and defaulters may be penalized, but high-quality borrowers do not benefit from the credit

reporting system. This arrangement favors lenders that do not want other lenders to poach their clients, but it is not favorable to borrowers who might get a better deal elsewhere.

- Increase crop storage capacity. There seems to be a vicious catch-22 that prevents investment in new crop storage facilities. The interest rate is high and repayment is too distant to be of interest to banks; meanwhile it is difficult to finance trade in many crops because of the lack of storage. Somehow this cycle needs to be broken, preferably through financial or tax incentives.
- Strengthen MFI reporting requirements and improve GHAMFIN’s capacity to collect information on lenders and borrowers, to allow GHAMFIN to fulfill its clearinghouse role. GHAMFIN should be able to monitor the percentage of total financing that microfinancing represents, and how microfinance is disaggregated by sector; by productive activities, such as agriculture, mining, etc., and by urban/rural parameters.
- Establish a clearinghouse on financial vehicles, incentives, etc., that are available through donors and others, by region. A significant constraint is a general lack of knowledge within the private sector of the various types of assistance available to them. This lack of information and coordination has resulted in donor funds going untapped. Programs vary in their requirements and in their geographic availability, such information should be more accessible than it is at present.
- Improve the knowledge base of lenders concerning agricultural lending. Most lenders have fairly rudimentary strategies, and they are uncertain how agriculture could fit profitably into these strategies. Loan officers are generally ignorant of how to assess an agribusiness (e.g., poultry layers) investment, and miss out on profitable opportunities.
- Educate agribusiness entrepreneurs on how to prepare business plans and develop and present financial projections so that they are readily understandable by loan officers.
- Formalize the sharecropping system so that such transactions are recorded. Until these transactions are documented there will be almost no way for the formal financial sector to reach them and the sharecroppers will remain “unbanked.”



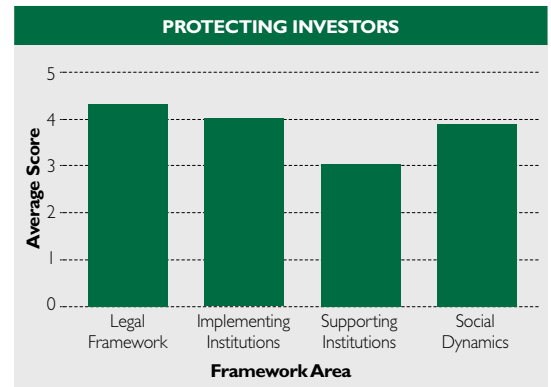
PROTECTING INVESTORS

Ghana's near-6% growth in recent years is attributable to a number of factors, largely the country's robust service, construction, and mining sectors, which have recently received dramatic new infusions of investment.⁸⁸ Promising news on the nation's economy, however, tends to mask more volatile conditions in its agricultural sector, where weather adversely impacted production in 2007;⁸⁹ the availability of irrigation and processing facilities falls far short of potential;⁹⁰ and poor infrastructure and storage capacity makes nearly all products, whether for export or local consumption, vulnerable to post-harvest loss.⁹¹ Given these conditions, there is an enormous need *and* opportunity for more capital to support Ghana's agriculture sector. As discussed in the previous chapter, however, credit options are both expensive and scarce.

PROTECTING INVESTORS	
<i>Doing Business</i> Ranking 2009	38
<i>Doing Business</i> Ranking 2008	33
Disclosure index	7
Director liability index	5
Shareholder suits index	6
Investor protection index	6

This chapter discusses opportunities in investment in agriculture, another critical path toward strengthening the sector. The viability of this path greatly depends on the protections afforded investors—that is, whether they feel that their capital contributions are safe with company directors; whether they believe they will be appropriately informed about a company's transactions; whether they have meaningful rights when they consider a company to be poorly managed; and so forth. Investment as a path toward growth further depends on the extent to which it is understood, encouraged, and valued, as exhibited by access to information; tax incentives; pro-active support from government agencies; and the ability to enforce contracts. In Ghana, conditions for investment are relatively strong in some respects but need significant strengthening in others.

There are a number of approaches to building capital for agricultural enterprises in Ghana. First, at the so-called grassroots level, individual farmers with few resources may pool their capital as cooperatives or, as generally referred to in Ghana, farmer-based organizations (FBOs).



These types of Organizations allow for a substantially deepened pool of resources when marketing or processing agricultural products. Throughout Ghana, such an approach to building capital has proven notoriously weak and remains vastly underdeveloped due to low rates of literacy and capacity among farmers of small plots, insufficient levels of trust among farmers, inconsistent treatment of agriculture contracts, and overall ambivalence about the role of cooperatives. Investors in FBOs—that is, small producers—are not especially well protected, given the typically unpredictable and informal operations of most cooperatives.

Second, entrepreneurs in agriculture—whether they start out as independent farmers or are outsiders who aspire to develop business opportunities in the sector—can seek capital, whether in the form of money, equipment, or other valuable contributions, from private investors, including individuals or firms. There are

88 Economist Intelligence Unit, Ghana Country Report 2008–2009 (November 2007), at 11 (hereinafter “EIU Country Report, 2008–2009”); *Ghana Attracts \$460m in investments in 3 months*, *Statesman* (April 24, 2008).

89 EIU Country Report 2008–2009, *supra* note 87, at 11.

90 See USAID/Ghana-Trade and Investment Program for a Competitive Export Economy, *Analysis of Agriculture Value Chain Financing Options* (March 2008).

91 *Id.*

examples of such investments throughout Ghana's agriculture sector; with the more successful enterprises exhibiting (on an anecdotal basis) certain key traits that provide lessons to others. These qualities include a willingness to invest for the long term; the use of a "nucleus" farm model that contributes to greater quality control on out-grower farms; creative use of public-private partnerships; a commitment to international standards in corporate governance, bookkeeping, and other business practices; and careful understanding and development of markets. On the one hand, due to a high degree of risk in Ghana's agriculture sector—compounded especially by poor seed, irrigation, transportation, and other infrastructure issues—the availability of local venture capital in agriculture enterprises is nearly non-existent and foreign direct investment in agriculture is extremely low compared to other sectors.⁹² Recent improvements in the arena of courts and alternative dispute resolution (ADR, which includes arbitration and mediation), on the other hand, have contributed significantly to reduced risk.

Third, larger or especially ambitious companies may seek capital by offering shares to the public through the Ghana Stock Exchange. This institution has been in place since October 1990 and enjoys a relatively solid reputation among investors and business advisors. At this time, at least 7 of its 35 listed companies, most of which are formerly state-owned enterprises, are directly involved in agriculture processing or marketing, including cocoa, palm and other vegetable oils, milk, and beer. Although the stock exchange is an option for larger, existing enterprises that seek to build capital (as opposed to most SMEs), public ownership should not be overlooked as a future destination for growing agricultural enterprises that are fundamentally strong and have demonstrated the potential to do even better.

In the category of Protecting Investors, the World Bank ranks Ghana 38th out of 181 countries surveyed in *Doing Business 2009*. This ranking, though slightly lower than the previous survey, suggests a relatively sound environment for corporate governance, including generally strong (though not ideal) requirements that corporate transactions be disclosed to shareholders and the public, clear repercussions when directors mismanage corporate resources, and the ability for shareholders to file suit against the company's officers and directors.⁹³ The environment for *agricultural* investors in Ghana, however, is not as healthy as Ghana's *Doing Business*

ranking indicates. Although the risks inherent in agriculture can hardly be eliminated entirely, there are many policy options available that could strengthen the investment environment.

The AgCLIR indicator scores, represented in the graph in this section, are among the highest of the topics covered in this report. The legal framework, implementing institutions, and social dynamics scores reflect more positive attributes than negative. (Strengthened FBOs would certainly increase the scores.) Supporting institutions is the weakest area, a finding that is consistent with many others throughout this report.

LEGAL FRAMEWORK

To attract and retain investors, a country must, as a threshold matter, have laws that provide adequate investor protections. This begins with ample access to law, so that investors can review in detail the legal environment that is afforded by the state to protect—or not protect, as the case may be—their capital investments. With respect specifically to investors in agricultural production and processing, adequate protection includes a sound legal environment for cooperatives; a legal framework for companies that conforms to international best practices of corporate transparency and accountability; reasonable incentives and strong protections for investors, both domestic and foreign; and sound systems for resolving disputes and enforcing the law.

KEY LAWS

- Decree on Cooperatives (1968)
- Companies Code (1963)
- Partnership Act (1962)
- Investment Act (1994)
- Free Zone Act (1995)
- Stock Exchange Act (1971)
- Securities Industry Act (1993)
- Export Development Investment Fund Act (2000)
- Venture Capital Trust Fund Act (2004)
- **Draft** law to establish Ghana Investment Corporation

ACCESS TO LAWS.

Compared to many countries, including several of those studied in previous BizCLIR diagnostics,⁹⁴ access to the legal and regulatory framework in Ghana is adequate. Most of Ghana's laws, including its major commercial laws, are published in reports that can be purchased for

92 For a detailed analysis of the factors contributing to a low rate of foreign direct investment in Ghana, see Cecilia Aryeetey et al., *Empirical Study on the Determinants and Pro-Development Impacts of Foreign Direct Investment in Ghana* (Hamburg: Institute of International Economics and Institute of Statistical, Social and Economic Research, 2007).

93 For details on Ghana's score for the Protecting Investors category, see <http://www.doingbusiness.org/ExploreTopics/ProtectingInvestors/Details.aspx?economyid=76>.

94 See www.bizclir.com.

a fee by law firms or accessed at law libraries, such as libraries attached to Ghana's law faculties and high courts. Other influential sources of law, such as Ghana's Supreme Court decisions and case law from the United Kingdom, are available in hard copy to those legal professionals who know where to look. In addition, a recent project by a private law firm has placed all of Ghana's laws, including most Acts of Parliament; Legislative Instruments; Constitutional Instruments; and Notices, Decrees, and Directives, in a word-searchable database, which is available from the firm for a fee. This resource is used with increasing frequency in the legal community, according to several lawyers interviewed for this diagnostic. There is also a growing body of secondary sources addressing the practice of Ghanaian law, such as a hornbook of Ghanaian tax law, published in 2006.

Access to law for potential foreign investors, however, is inadequate. For example, the only laws posted on the website of the Ghana Investment Promotion Centre (GIPC), the country's agency charged with facilitating foreign investment, are the Free Zones Act and the Investment Act. Although these laws are relevant to the interests of foreign investors, they do not cover a variety of other legal questions an investor will likely have, including, among others, company registration requirements, expectations for corporate governance, tax requirements, labor and employment law, dispute resolution issues, intellectual property concerns, and customs and excise issues. Although several of Ghana's key laws are accessible at other places on the Internet, certain of them—in particular, the cornerstone Companies Code—are not easily found, if they have been posted at all. A single on-line repository for Ghanaian commercial law, regularly updated, would serve as an excellent signal to investors that the “rules of the road” for investment in Ghana are clear and accessible. Such a project need not, incidentally, be a public endeavor—a variety of self-sustaining models for Internet-based information providers are available for study and adaptation.

COOPERATIVES AND FBOs.

A cooperative refers in this report to any type of organization formed for the purpose of collectively processing or marketing agricultural products. In Ghana, an FBO can be organized as a cooperative, a company, or a non-profit organization.⁹⁵ In general, cooperatives and FBOs are businesses that are owned and controlled by the farmers who use its services. *Supply*

cooperatives supply their members with inputs for agricultural production, including seeds, fertilizers, fuel, and machinery services. *Marketing cooperatives* are established by farmers to undertake transformation, packaging, distribution, and marketing of farm products (both crop and livestock).⁹⁶ Services received and earnings allocations are shared by the cooperative/FBO members on the basis of use.

Particularly in rural and agricultural settings, cooperatives and FBOs have the potential to contribute to the development of productive, efficient, and scientific-based systems. Cooperatives can strengthen market access and support competitive returns for independent farm operators. In addition, cooperatives and FBOs can play an important role in rural communities, where they encourage democratic decision-making processes, leadership development, and education.⁹⁷

Unfortunately, in Ghana, as in many African countries, the history of cooperatives is one that discourages confidence in this model as a promising investment opportunity for small producers. Beginning with the use of cooperatives as a mechanism for serving colonial powers, followed by a mid-twentieth-century norm of strict government control over cooperatives, the model engenders very little trust. There has been scarce progress in the development of a new cooperative law to replace a **1968 decree governing agriculture cooperatives** in Ghana. A 2001 draft law was reportedly rebuked by the World Bank, due to a continued emphasis on government control over cooperatives, and little appears to have come from a donor-supported initiative in 2003 to draft a new law.⁹⁸ There exists an institution called the **Department of Cooperatives** in Ghana, but it is poorly resourced and appears to have minimal influence.

In fact, a modern cooperative law is not essential for service and marketing cooperatives to be established and to function as they should. Nor is the existence of a cooperative law, in itself, sufficient for cooperatives to prosper.⁹⁹ Agricultural cooperatives can function where there is a sound law of contract and a viable system of dispute resolution, as well as a healthy respect for the rule of law. In Ghana, cooperatives need not formally register with the government to function. If they do wish to enter the formal sector (and thereby access the many advantages of doing so, including limited liability and access to finance), they can register as companies with the Registrar General's Office or identify themselves as

95 MoFA, AASIP, *Operating Guidelines for the FBO Development Fund and Extension Development Fund* (2005), at 11.

96 Farmers may also rely on credit cooperatives as a source of financing for both working capital and investments.

97 U.S. Department of Agriculture, *Agriculture Cooperatives in the 21st Century* (November 2002), at v.

98 See National Cooperative Business Association, *Building Better Co-op Law* (June 2003).

99 Henry Hagen, *The Creation of a Supportive Environment in Theory and Practice: Cooperative Law. Is it Necessary; Is it Sufficient for Cooperatives to Prosper?* (June 2002).

FOREIGN INVESTMENT IN GHANA—JANUARY–MARCH 2008

Total investments reported by GIPC:	\$460.7 million
Total new projects:	92, with a "total value" of \$3,032 million
Manufacturing	16 projects, valued at \$55 million
Services	19 projects, valued at \$4.3 million
Construction	6 projects, valued at \$2,079 million
Export Trade	6 projects, valued at \$2.3 million
Agriculture	5 projects, valued at \$1.13 million
General Trading	29 projects, valued at \$819.2 million

Source: *Ghana Attracts \$460m in investments in 3 months*, *The Statesman* (April 24, 2008).

“In Ghana, as in most of Africa, there is a yawning lack of venture capital, and this is the case for agricultural endeavors to a degree even more severe than for services, construction, trading, or information communications technology (ICT).”

cooperatives to the Department of Cooperatives under the Ministry of Manpower Development and Employment. Most important, cooperatives and FBOs require an atmosphere of trust, bolstered by formal tools of accountability, which—as detailed further in this chapter’s discussion of Implementing Institutions—do not yet exist to a sufficient degree among Ghana’s smaller producers.

COMPANY ORGANIZATION AND CORPORATE GOVERNANCE.

The law governing the structure and governance of companies in Ghana—the law that, at its heart, determines whether investors are indeed “protected” from self-dealing or lack of accountability on the part of company directors—is Ghana’s **Companies Code of 1963**. This code was based on then-existing British company law, which itself has since been substantially updated and replaced.¹⁰⁰ Ghana’s Companies Code includes the “usual” provisions for establishing and governing companies—it identifies and defines the kinds of companies that may be established; it sets forth the process for registering a company; it addresses company names; it lists the duties of officers and directors; and it includes a section on the liquidation and winding up of companies (addressed in this report’s chapter on Closing a Business.) The code has been amended a few times over the years, including in 1997 for the purpose of altering minimum capital requirements and widening access to registered company information.

Ghana’s Companies Code is generally adequate to protect investors in agribusiness, although it could go further. As a threshold matter, the code provides for the critical feature of limited liability—that is, company owners are liable for the debts of the company only to the extent of their shares held in that company (limited

liability company) or in the amount they have specifically undertaken (company limited by guarantee) (Sections 9–11). The code also sets forth relatively clear requirements for governance and management of companies (Parts O and P) and requires strict keeping and publication of accounts (Sections 123–136).

Despite the code’s generally solid foundations, an updated law could do more to reflect the reality that smaller companies are currently discouraged from entering the formal sector by the cumbersome organizational formalities required under the code. As opined by one lawyer in Kumasi, many small businesses fail to register with the state because they are intimidated by the formal requirements they are expected to follow. At the same time, smaller companies *do* need to engage in sound and transparent governance practices, so that, among other reasons, they can be reasonable candidates for outside investment. For example, a more modern law might provide for more fluid methods of communication, including electronic communication, and limit the formalities of shareholder meetings to a degree that is appropriate for smaller companies, if not for larger companies. As another lawyer commented, “the code is out of tune with today’s reality.”

Pursuant to the Companies Code, company directors in Ghana hold a position of fiduciary responsibility. This means that they act legally on behalf and in the best interests of the company and they are obliged to act with “utmost good faith toward the company in any transaction with it or on its behalf” (Section 203). Company directors are further required to avoid conflicts of duty or interest (Section 205). Breaches of duty may result in civil liability (Sections 209–210). The code does not include, however, a specifically stated “duty of loyalty,” which in modern company law obliges directors to refrain from using their positions to further their own interests rather

¹⁰⁰ Companies Act 2006 (United Kingdom). The new company law in the United Kingdom endeavors to “enhance shareholder engagement” and to serve smaller businesses in more relevant terms by eliminating practices that make sense for large companies, but are unduly burdensome for smaller, privately held companies. See U.K. Department of Trade and Industry, *Company Law Reform White Paper* (March 2005). The prior version of the UK company law was the Companies Act 1985.

than the interests of the shareholders. Nor does the code go as far as many modern laws do with respect to shareholder empowerment.

Although the Companies Code does not distinguish between foreign and domestic companies, other sources of authority, specifically the Investment Act of 1995, indeed make that distinction. To register an agricultural-processing company, a business wholly owned by a domestic investor need not pay a minimum foreign capital requirement. A joint venture or foreign-owned enterprise engaged in agricultural production or processing, however, is charged US\$10,000 and US\$50,000, respectively.¹⁰¹ (Ghana also reserves a few types of businesses to Ghanaians—including beauty and barber shops; taxi services; lotteries; and petty trading, hawking, or selling at a market—but these restrictions do not directly impact the agricultural sector.)

For “years and years,” according to one law professor, Ghana’s Companies Code has been considered by policy makers for major overhaul. The fact that no action has been taken suggests to him that there are “vested interests in not changing the law”—that is, “people who benefit from a lack of transparency and accountability” in managing their companies may be resisting legal change.

Ghana’s **Partnership Act of 1962** remains in force but is a far less common vehicle for registration of enterprises than the Companies Code.

INVESTMENT LAW.

Ghana has long had a policy of encouraging investment in its productive sectors, including agriculture. The **Investment Act of 1995** has served as a solid cornerstone for both domestic and foreign investors, strengthening predictability and allowing Ghana to compare favorably to other countries in the region where the opportunities are not as clearly defined or consistently enforced. The Investment Act applies to nearly all of Ghana’s sectors, with the exception of mining and petroleum (Section 17).

Key aspects of the Investment Act include the following:

- There is a clear guarantee against expropriation of the investment by the state, with narrow exceptions for acquisitions made, with court approval, in the public interest (Section 28).
- There are no requirements on physical location of investments. Certain tax incentives encourage investment in specific geographic locations—primarily in areas outside the main urban centers, however.

- There are no import substitution restrictions.
- There is customs duty exemption for agricultural and industrial plant, machinery, and equipment imported for investment purposes as contained in chapters 82, 84, 85, and 92 of the **Customs Harmonized Commodity and Tariff Code**. Goods imported specifically for the agricultural sector also generally avoid relevant processing and/or other related fees or levies charged to goods for other sectors, ranging between 0.5% and 1% (Section 24).
- There is compulsory employment of Ghanaians to the extent that any investment in a trading enterprise must employ a minimum of 10 Ghanaians. The issuance of visa/work permits for expatriate staff is tied to the size of the investment (Section 30). (Exceptions apply in free zones.)
- There are regulations relating to the transfer of technology when it is not freely available in Ghana. For example, according to the Technology Transfer Regulations (1992), total management and technical fee levels should not exceed 8% of net sales. Higher fees have to be approved by the GIPC (See Section 33).

The Investment Act also established the GIPC, setting forth the agency’s two primary objectives: (1) to encourage and promote investment in the Ghanaian economy; and (2) to coordinate and monitor all activities to which the statute applies (Sections 1–16).

FREE ZONES.

The **Ghana Free Zones Act of 1995** was enacted to promote processing and manufacturing of goods through the establishment of export processing zones (EPZs) and encourage the development of commercial and service activities at seaport and airport areas. The statute provides that laws relating to importation and exportation of goods and services other than consumer goods for commercial purposes do not apply to goods brought directly from outside Ghana into a free zone or goods exported from a free zone to a country outside Ghana. Imports by a free zone developer, subcontractor, or enterprise into a free zone are similarly exempt from indirect taxes and duties.

The Free Zones Act provides certain advantages that are not available to all investors, including unrestricted work and residence permits to EPZ investors and employees.

Investors seeking to take advantage of the Free Zones Act may set up business in one of three EPZs—at Tema, Ashanti, or Secondi—or they may independently apply for “free

¹⁰¹ Investment Act, Section 19; see also GIPC, Investment Procedures, available at <http://www.gipc.org.gh/pages.aspx?id=49>. All foreign-owned or joint-venture trading companies are required to invest minimum foreign capital of US\$300,000.

**SUMMARY OF TAX INCENTIVES:
“AGRICULTURE AND AGRO-INDUSTRY”**

Cocoa farmers and producers—income tax-exempt

Cattle ranching—10 years tax holiday

Tree cropping (e.g., coffee, oil palm, shea butter; rubber, and coconut)—10 years tax holiday

Livestock excluding cattle and poultry—5 years tax holiday

Fish farming, poultry, and cash crops—5 years tax holiday

Agro-processing—the business of converting crops, fish, or livestock produced in Ghana into edible canned or other packaged product other than in their raw state—5 years tax holiday

After the initial 5-year tax holiday period, agro-processing enterprises that use local agriculture raw materials as their main inputs have corporate tax rates fixed according to their location as follows:

- Accra-Tema—20%
- Other Regional Capitals—10%
- Outside Regional Capitals—0%
- All over Northern, Upper East, Upper West Regions—0%

Source: GIPC website, Investment Incentives, Benefits and Guarantees, <http://www.gipc.org.gh/pages.aspx?id=39>

zone” status. As confirmed by the operator of at least one agricultural-processing plant visited during this diagnostic, the opportunity to function as a free zone is an attractive option to processors located in rural parts of the country.

PUBLIC OWNERSHIP.

The Ghana Stock Exchange was established in July 1989 as a private company limited by guarantee under the Companies Code. In October 1990, the stock exchange was recognized as an authorized stock exchange under the **Stock Exchange Act of 1971**. The Council of the Exchange was inaugurated on November 12, 1990, and trading commenced the same day. The exchange changed its status to a public company limited by guarantee in April 1994.

At this time, 35 companies are listed with the Ghana Stock Exchange, 7 directly dealing in agricultural products. Most listed members of the exchange are former state-owned enterprises and at least 2—the Ghana Oil Company and the State Insurance Company—are public institutions. All the listed companies are audited, most by internationally reputable firms that use international accounting standards. Foreigners may hold up to 10% of any security and total holdings of all external residents may not exceed 74% of any one company.

VENTURE CAPITAL AND OTHER SOURCES OF CAPITAL.

In Ghana, as in most of Africa, there is a yawning lack of venture capital, and this is the case for agricultural endeavors to a degree even more severe than for services, construction, trading, or information

communications technology (ICT). There are a few formal sources of capital that business development services professionals might seek on behalf of their clients, although detailed information about each, including lists of portfolios and values of investments, is not readily available:

- Ghana’s **Venture Capital Trust Fund (VCTF)** is a scheme established by the government of Ghana through a Parliamentary Act passed in November 2004. The object of the law is to establish a venture capital trust fund with the aim of providing investment capital to SMEs. In addition, the statute provides for the development and promotion of venture capital financing in the country. Prospective venture capital companies may apply to the fund for financing. Monies from the trust fund are intended to be directed to priority sectors of the economy, as identified in accordance with the government’s growth strategy. Agricultural processing is among the identified priority sectors, which also include ICT, pharmaceutical, and tourism. The short-term influence of the new fund is not clear. The VCTF website suggests links to annual reports, but these links do not work.
- The **Export Development Investment Fund (EDIF)**, established in 2000, is a vehicle specifically designed to promote agriculture exports. This fund, which is drawn from a 0.5% tax on most imports, is chiefly a lending mechanism, routed through Ghana’s various banks. It also provides for substantial grants, according to its website.¹⁰² The fund was established as a “facility to assist those in

¹⁰² EDIF website, available at <http://www.edifghana.org/index.php>.

agriculture, manufacturing and export services providers and thus give impetus to the industrialisation of the country.¹⁰³

- The **Overseas Private Investment Corporation** (OPIC) is a self-sustaining agency of the U.S. government which has, since 1971, helped U.S. businesses invest overseas, supported economic development in new and emerging markets, complemented the private sector in managing risks associated with foreign direct investment, and supported U.S. foreign policy. The OPIC's current relationship with Ghana has been in place since 1999, when the countries entered into a relationship through which the OPIC would help promote "the development of economic resources and productive capacities" in Ghana.¹⁰⁴
- A **bill to establish the Ghana Investment Corporation** was drafted in 2007 and aims to create an independent investment authority to encourage private-sector participation in financing of infrastructure in the energy, railways, roads, and water sectors.¹⁰⁵

There are additional sources of venture capital in Ghana, including through donor programs and individual investors. The key, in many instances, is to know where to look. But such knowledge is not easily found by poorer constituencies located far from the capital. One challenge to all government and donor services oriented toward agriculture is to bring the services—through technology and in person—to the places that need them most.

IMPLEMENTING INSTITUTIONS

MINISTRY OF FOOD AND AGRICULTURE (MOFA).

The institution that is charged with supporting the agricultural sector in Ghana, including through extension services to farmers and support of the cooperative model as a means of investment, is MoFA. The agency's **Directorate of Agriculture Extension Services** has long had World Bank support for an Agriculture Services Sub-Sector Investment Project (AgSSIP), which aimed "to develop a grassroots independent movement of FBOs that is led and run by the farmers themselves."¹⁰⁶ A \$25 million loan for AgSSIP II, which is designed to build on this work, was

approved in June 2008. In addition, assistance to FBOs will be a core mission of the Millennium Challenge Authority, discussed in the next section of this chapter. In the past, moreover, the U.S. Department of Agriculture through USAID has worked with MoFA to "extend western cooperative models into a Ghanaian setting to help farmers there transition to a more commercial level of food production."¹⁰⁷ The German government is another donor institution that has committed to working to build the capacity of FBOs, and several other NGOs work directly or indirectly in support of FBOs. Despite this significant donor support, a review of MoFA's webpage for FBOs, in addition to observation on the ground, confirms that FBOs in Ghana remain extremely weak, particularly at the regional and local levels. MoFA itself receives reviews from its constituencies—farmers, processors, and agricultural economists—that are mixed, at best. For example, MoFA is characterized by various observers as "large and unwieldy"; suffering from "poor leadership"; and as failing to empower its technical experts in favor of its higher-level generalists. One poultry farmer complained that MoFA does not adequately track production, therefore making it difficult for him to understand the domestic market in which he operates.

KEY IMPLEMENTING INSTITUTIONS

- Ministry of Food and Agriculture
- Farmer-Based Organizations
- Ghana Investment Promotion Centre
- Ghana Stock Exchange
- Free Zone Board
- Courts

Other constituents comment that "technical capacity [at MoFA] is not a limitation" and its "people are perfectly capable." MoFA's extension services are considered by some farmers as adequate to their needs, although they are criticized by others as "inadequate," of "low quality," and "not up on recent technology."

Given this wide range of perceptions of MoFA, with respect to its overall capacities, its extension services, and its support for FBOs, the agency would clearly benefit from a thorough independent survey of its users, so that its strengths and weaknesses can be comprehensively identified, analyzed, and addressed.

¹⁰³ See Christian Agubretu, *Export Development and Investment Fund Makes Strides* (November 30, 2003), available at <http://www.ghanaweb.com/GhanaHomePage/features/artikel.php?ID=47571>.

¹⁰⁴ See Investment Incentive Agreement Between The United States and Ghana, available at <http://www.opic.gov/doingbusiness/ourwork/africa/index.asp>.

¹⁰⁵ Africa Development Bank/ Organization for Security and Cooperation in Europe, *African Economic Outlook* (2008), at 340–41.

¹⁰⁶ See MoFA website, <http://fboghana.org/AgSSIP.php>.

¹⁰⁷ John R. Dunn, *USDA co-op development efforts support commercial farming in Ghana*, Rural Cooperatives (May–June 2004).

FARMER-BASED ORGANIZATIONS (FBOs).

A public database maintained by MoFA¹⁰⁸—which has not been continuously updated—lists about 350 FBOs. There is no other definitive list of FBOs maintained by a private, public, or NGO source, although MoFA is reportedly updating this list through MiDA support. The ambiguity of the institutional structure of many FBOs is made clear by the MOFA database. Namely, whether an FBO is organized informally or as a cooperative, company, or NGO is often not listed or able to be definitively determined.

As noted, FBOs in Ghana are, with limited exceptions and despite years of intervention from the government and the donor community, notoriously weak. There is evidence that this situation is changing in at least some areas with MiDA assistance. At least 1,200 FBOs with 60,000 farmers are receiving training in improved agricultural practices and FBO management. Opportunities for achieving the economies of scale inherent in collectively purchasing inputs and bringing together agricultural products for processing and marketing, as discussed earlier in this chapter, are still far from being achieved.

It is not that the FBOs in Ghana do not achieve some benefits that render their members better off than if they did not collaborate at all. Members of various organizations interviewed for this diagnostic report that FBOs do or have done the following:

- Facilitated training and other exchanges of knowledge about diseases, treatments, crop or livestock care, suppliers, etc.
- Encouraged guarantees among members for the purposes of getting loans
- Negotiated on behalf of members, leading to aggregated demand for supplies and discounted prices on inputs
- Provided for sharing equipment
- Successfully sued members who broke their contractual obligations with the FBO
- Represented industry interests to government on a national level

Yet most FBOs interviewed for this diagnostic exhibited a remarkable ambivalence about their mission, a conclusion that is underscored by a review of the MoFA database. Examples of this mixed view of the role of FBOs include the following:

- Failure to formalize, whether as a cooperative, a company, or NGO

- Poor understanding of market potential or specific business opportunities in such areas as poultry, seed, and cotton
- Widespread unwillingness to engage in marketing of FBO products to obvious but untapped customers
- Unusual dependence on donor organizations as customers or sources of funds
- Heavy reliance by regional organizations on their national leadership, as opposed to developing independent, regionally oriented visions and programs for economic growth
- Ambiguous plans for financial accountability, thereby undermining bank loans as an option for building capacity
- Routine self-dealing among FBO members that reportedly flouts organizational commitments
- A pervasive attitude that subsectoral problems could only be resolved by increased protectionism at Ghana's borders.

The cocoa industry may provide some much-needed motivation for FBOs operating in other agricultural subsectors to achieve the potential of their cooperative model. For example, one cocoa FBO has developed its own “Fair Trade” brand, which allows its farmers to garner more than the approximately 70% of the (hedged) market price that cocoa farmers reportedly receive. Another cocoa FBO has developed its own “organic” branding, which promises production opportunities for its members that are not available to others.

Ghana's cocoa industry is often cited by individual farmers and FBOs as a model for how agriculture “ought to work” in Ghana. In short, Ghana's 60-year-old Cocoa Board oversees the purchase of all cocoa from the nation's thousands of cocoa farmers. Through a system of licensed buyers and haulers, the Ghana Cocoa Marketing Company buys and sells cocoa on behalf of the Cocoa Board. Cocoa farmers are required to receive no less than 70% of a price dictated by the London Commodities Exchange, as “hedged” in advance by the Cocoa Board. The balance of that price is then distributed among the licensed buyers and haulers and a set of other institutions that are dedicated to ensuring the productivity and quality of Ghana's cocoa crop, including Ghana's Standards Board, the Cocoa Research Institute, a center for disease control, a seed production unit, and a quality control division. The state takes the surplus monies in years that surpluses are achieved.

108 See <http://fboghana.org/index.php>.

Cocoa farmers are prohibited by law from selling their product to buyers other than those sanctioned by the Cocoa Board. In fact, state officers are posted at many of Ghana's border crossings to discourage and combat smuggling of cocoa. The question of *why* cocoa farmers often take the risk of selling their products illegally in neighboring countries suggests that the satisfaction of the farming community with this non-negotiable model of doing business warrants some scrutiny. Whether the Cocoa Board's monopoly over the crop as currently practiced is the best system for the long term is an issue that necessitates continued discussion at all levels of the value chain.

Nonetheless, during the course of this diagnostic, there was a common refrain from all types of farmers—poultry, cotton, and produce—that “We want a Cocoa Board for our product.” For many reasons, adoption of the Cocoa Board model for other crops in Ghana is not realistic or even a good idea. First, Ghana's tradition of government control over the nation's cocoa crop is a construct that is unlikely to be duplicated in a twenty-first-century business environment that is less oriented toward state-owned enterprises and commercial solutions. Recent entrants into Ghana's agriculture sector—exporters of shea products, for example—explicitly resist the notion that the government should control the industry, thus interfering with their growth and profit opportunities. Second, and equally important, most other crops simply do not lend themselves to the type of collective state oversight that cocoa affords. Although producers of poultry or cotton may like the idea of being able to sell their product to a single set of state-sanctioned buyers at a price dictated by international markets, this option may seem less attractive when “the cut” taken by the state is taken into account. Moreover, the Cocoa Board's terms of operation are not realistic in the absence of a viable, constant, international market. As many observers pointed out, the state's money is better spent on such public goods as infrastructure and education, rather than on buying up all the domestically produced chicken or cassava in the country. Crop perishability is another reason why the Cocoa Board model does not translate: fresh produce such as pineapple or tomatoes cannot be stored the way cocoa can.

Thus, FBOs in Ghana should resist being distracted by the Cocoa Board model and turn instead to more realistic ways of investing in themselves for greater production and prosperity. For all the donor interest in FBOs, surprisingly little reveals itself as having worked

beyond the national organizations based in Accra. Beyond the capital, FBOs engage in very little marketing; they resist or flout contracts with identified buyers; and they rarely organize into formal structures—such as limited liability companies—that would make them attractive customers for loans. As explained by one bank manager, who recently turned down a request for a loan from an FBO, “We need to know who we will hold responsible” for paying back a loan.

Strengthening FBOs should indeed be a continued priority of both the state and the donor community. The lessons learned from interventions to date should be fully and honestly evaluated so that mistakes or missteps of the past do not take place again.

GHANA INVESTMENT PROMOTION CENTER (GIPC).

Ghana's “gateway” agency for foreign investment (as well as for joint ventures and certain domestic investments) is the GIPC. As evidenced by dramatic increases in foreign investment in 2006, 2007, and 2008, the GIPC is serving the country well, with inward flows of FDI in the range of five times the annual rate it was earlier in the decade.¹⁰⁹

That said, although the GIPC is a strong, effective organization when compared to similar agencies visited in prior BizCLIR diagnostics,¹¹⁰ it seems to be far more oriented toward investments in trading, manufacturing, and services than in agriculture. Recent investment figures suggest that agriculture is in fact overlooked in favor of more short-term, import-oriented opportunities. Even if “manufacturing” FDI flows are inclusive of agricultural processing, far more, it appears, could be done to incorporate Ghana's agricultural advantages into its inward flows of FDI.

KEY SUPPORTING INSTITUTIONS

- Ghana Export Promotion Council
- Export Development Investment Fund
- Millennium Development Authority
- Overseas Private Investment Corporation
- Registrar General
- Irrigation authority
- Business development services
- Other professional services
- Universities
- Other professional associations and NGOs
- Media

¹⁰⁹ See UNCTAD, *World Investment Report 2007, Country Fact Sheet—Ghana* (exhibiting an increase of inward FDI from US\$125 million in 2005 to US\$435 million in 2006).
¹¹⁰ See www.BizCLIR.com.

The GIPC's web presence leaves a solid first impression with potential investors in that it clearly addresses the opportunities for investment in Ghana, including those in agriculture.¹¹¹ It further sets forth the costs and procedures for investing, including licensing procedures, information that can be hard to find in other countries. The GIPC also provides information concerning how an investor may go about taking the next steps in learning about a potential investment. As previously mentioned, however, the GIPC's website should expand the availability of Ghanaian law: potential investors should be directed to a single, one-stop resource for relevant commercial laws in Ghana. Moreover, the GIPC's web presence is rapidly falling out-of-date—for example, its most recent posted annual report is from 2005 and its only statistical document is from 2006—suggesting that some of its information may no longer be relevant.

With the assistance of a local office of an international consulting company, the GIPC is transforming some of its business processes. This process includes efforts to centralize the agency's operations and to streamline requirements for investors so that the time it takes to obtain all necessary permits and licenses can be reduced. In the future, such agencies as the Registrar General's Office, the Immigration Authority, the IRS, and the GIPC are to be linked, so that information are to be accessible from one another and cross-checked for veracity.

One area in which the GIPC does not appear to be achieving its potential is with respect to forging direct connections between potential investors and existing companies engaged in agricultural production or processing, particularly outside of Accra. This diagnostic found a number of mid-sized companies in a sound position to handle an infusion of investment—their books are regularly tracked by qualified auditors and their fundamentals are strong—but never had the benefit of a GIPC-facilitated introduction to or reference of a potential investor: GIPC-sponsored events that might connect investors with opportunities are few and far between, and none appear to be directly oriented toward agriculture.

GHANA STOCK EXCHANGE.

Although the stock exchange is in place to facilitate the public ownership of larger companies in Ghana, it should not be overlooked as a positive force for investment in Ghana's agriculture sector. The stock exchange hosts trades three times a week and has earned a reputation for sound management, transparent practices, and investor satisfaction, according to several observers

queried for this diagnostic. Of course, the stock exchange is the home of Ghana's largest companies, many of which are formerly state owned or even continue to be partially state owned. As it pertains to protecting investors in Ghana, however, the stock exchange offers a comparatively safe and promising investment opportunity, so long as investors understand the risks. The stock exchange's regulatory authority, the **Securities and Exchange Commission**, does not enjoy the same positive reputation, although specific concerns were not investigated during the course of this diagnostic.

FREE ZONE BOARD (FZB).

The role of the FZB is the following:

- Provision of information on investment opportunities under the free zones program
- Issuance of licenses to approved free zone enterprises
- Assistance in securing other permits from related agencies
- Provision of ready facilities, including serviced land, factory shells, and utilities at the Tema EPZ
- Assistance in securing work/residence permits for expatriate workers

Only Tema has been developed as a fully functioning free zone. Three other sites have been designated for future free zone use—one in the Ashanti, near the Kwame Nkrumah University of Science and Technology; one at Sekonti, designated primarily for oil refinery and related activities; and one at Shama, a 3000-acre enclave that has not yet been developed.

Free zones are also permitted to be designated by companies applying for that status, and anecdotal evidence suggests that the FZB is fair and prompt with its willingness to make that designation. Nonetheless, the area of free zones is one that warrants a very close look for future agroprocessing development policy. Free zones can be a very fruitful device for speeding export production and trade and encouraging investment. The key to their success, however, is government commitment, empowerment of the free zone authority, scrupulous ethical standards on the part of the authority, and participation in the development and management of the zones by those companies that are likely to use them. The FZB appears to understand its mission and have a commitment to achieving it, but a more forceful policy dedicated to building and opening the zones, and recruiting companies to work in them, is likely necessary for the zones to achieve their potential.

¹¹¹ See <http://www.gipc.org.gh/home.aspx>.

COURTS.

Ghana exhibits far sounder conditions for the enforcement of contracts, including those that concern investments, than most countries previously examined by BizCLIR. The following factors contribute to a relatively positive environment for dispute resolution, which, in turn, reduces perceived risk on the part of investors:

- The development of a new Commercial Court in recent years, as well as “fast-track” high courts
- The growth of alternative dispute resolution (ADR) mechanisms, including both arbitration and mediation
- A well-established community of valuation and accounting professionals
- A growing sense that corruption in public institutions, including courts, will no longer be tolerated.

These points are further discussed in this report’s chapter on Enforcing Contracts.

SUPPORTING INSTITUTIONS

GHANA EXPORT PROMOTION COUNCIL (GEPC).

The mission of the GEPC is to develop and promote exports of non-traditional products, that is, all potential exports other than cocoa, mining products, and timber. The GEPC provides assistance at the enterprise level in production, marketing, and training and general advisory services as well as participation in export finance committees. The GEPC also maintains statistics about Ghana’s export portfolio and is one of the stronger government sources of data on the economy. Although the GEPC’s activities are centered in Accra, it does operate five zonal offices, each housing two professional staff. Limited resources have led the GEPC to leverage marketing opportunities, including through cooperation with the trade promotion offices of other countries and coordination with the ECOWAS Secretariat.

EXPORT DEVELOPMENT INVESTMENT FUND (EDIF).

Established in 2000, the EDIF supports exporters with funds at “concessionary rates” in order to make Ghana’s exports competitive on the international market.¹¹² The fund also gives grants to strengthen public and private sector institutions and associations that provide services to the export sector to facilitate their work.

Details concerning EDIF grants are not particularly clear from public sources. According to an undated news release on its website, EDIF gave a grant earlier in this decade, valued at around US\$85,000, to the Akwamufie Women Farmers’ Association, of Akwamufie in the Asuogyaman District of the eastern region to support the production of chili pepper for export. The fund provided one Massey Ferguson tractor, chili pepper seeds, one irrigation machine, a solar drying machine, a mill for grinding, construction of a shed/warehouse, and various other supplies. The website provides no follow-up information concerning the success of this grant. There is a similar lack of clarity with respect to another EDIF procurement of farming machinery and supplies, also for chili pepper; to the Mumuadu Pepper Growers Association at Osino in the eastern region. Facilitated in late 2007, this arrangement appears to be in the form of a grant, although there is also reference to “paying back loans.”¹¹³ Although the EDIF website indicates a page where it intended to publish information about its overall portfolio, this page is not maintained.

The EDIF consists of two facilities: the Export Development and Promotion Facility and the Credit Facility. The Credit Facility gives loans through Designated Financial Institutions (DFI) appointed by the EDIF Board to participate in the EDIF scheme to individual/corporate exporters, producers of export goods (manufactured items/agricultural produce) developers of infrastructural projects to provide services to exporters. To benefit from the fund, companies and enterprises must be wholly Ghanaian owned or have majority Ghanaian shareholding. The DFI bears the credit risk for loans disbursed to applicants through its bank. At this time, the maximum lending rate is 12.5%, a figure based on the Bank of Ghana’s prime rate.

As of September 2008, the EDIF’s website did not provide specific information about its Export Development and Promotion Facility.

MILLENNIUM DEVELOPMENT AUTHORITY (MiDA).

The organization established for the purpose of implementing the transfer of \$547 million over five years by the United States’ **Millennium Challenge Account** will focus on agriculture as one of its primary targets for comprehensive development and, more specifically, FBOs as a key aspect of that development agenda. Specifically, MiDA has committed to “Farmer and Enterprise Training in Commercial Agriculture,” a

¹¹² EDIF website, available at <http://www.edifghana.org/index.php>.

¹¹³ Peter Abban, *EDIF Donates to Pepper Farmers*, *Statesman* (November 22, 2007).

program designed “to accelerate the development of commercial skills and capacity among FBOs and their business partners (including service providers to FBOs and other entities adding value to agriculture crops such as processors).”¹¹⁴

MiDA’s agenda for agriculture further includes the following:

- **Farmer and Enterprise Training in Commercial Agriculture:** To accelerate the development of commercially oriented skills and capacity among (1) farmer groups and their members, (2) entities that distribute inputs to farmer groups; and (3) entities that add value to agricultural crops purchased from farmer groups;
- **Irrigation Development:** To establish a limited number of retention ponds and weirs requested by the FBOs and FBO partnerships for whom access to water is critical to the success of their business objectives;
- **Land Tenure Facilitation:** To improve tenure security for existing land users and to facilitate access to land for commercial crops in the Intervention Zones;
- **Improvement of Post-Harvest Handling and Value Chain Services:** To facilitate strategic investments by FBOs in post-harvest infrastructure improvements and to build the capacity of the public sector to introduce and monitor compliance with international plant protection standards;
- **Improvement of Credit Services for On-Farm and Value Chain Investments:** To augment the supply of, and access to, credit provided by financial institutions operating in the Intervention Zones; and
- **Rehabilitation of Feeder Roads:** To rehabilitate up to 950 km of feeder roads in the Intervention Zones in order to reduce transportation costs and time, to increase access to major domestic and international markets, and to facilitate transportation linkages from rural areas to social service networks (including, for instance, hospitals, clinics, and schools).¹¹⁵

MiDA’s enunciated priorities are based on a comprehensive needs assessment that took place in conjunction with the Ghanaian government, the Millennium Challenge Corporation, and numerous stakeholders. At the time of this diagnostic, however, the anticipation of MiDA’s contributions was being overwhelmed by disappointment within the agricultural community that tangible interventions had not yet taken place, as well as

misunderstanding generally about what can and should be expected from MiDA. The agency is also vulnerable to the mistrust that exists generally beyond Accra, namely, a widespread perception that most development money is funneled toward certain privileged institutions and individuals, and that its impact rarely reaches rural communities outside the capital. Indeed, the extreme reliance in Ghana on outsiders as a source of capital support and business innovation is a topic that warrants continued consideration. To be successful in the long term, MiDA must act *and* be perceived as acting to empower the private sector, rather than as a substitute for private sector innovation and activity.

OVERSEAS PRIVATE INVESTMENT CORPORATION (OPIC).

The OPIC’s involvement in Ghana in recent years has not directly concerned the agricultural sector. Instead, it has focused on mortgages and the housing sector. However, the agency has created two Africa-based investment funds that could serve in the future as important sources of capital in Ghana’s agricultural sector. First, in August 2008, OPIC approved up to \$60 million in financing to support *ECP Africa Fund III*, which will make investments of between \$25 million and \$100 million in established businesses with “exceptional growth prospects” throughout Africa. Specifically, this fund will target companies that have pan-African reach and provide jobs and consumer goods across several countries, and countries that are undertaking economic and political reforms.

At the same time, OPIC approved up to \$67 million in financing to support the *Greylock Africa Opportunity Fund I*, which is designed to invest in medium-sized businesses throughout Africa, with an emphasis on Sub-Saharan Africa. With a target capitalization of \$200 million, its focus will be on telecommunications, finance and banking, agribusiness, tourism, real estate, natural resources, and energy. The fund is designed specifically to target the financing gap faced by mid-sized African companies, by providing creative financing opportunities of debt and hybrid debt not currently offered by banks. The fund aims to help to diversify African capital markets, by expanding the pool of investment securities available to both issuers and investors.

REGISTRAR GENERAL (RG).

The role and effectiveness of the Registrar General is detailed in this report’s chapter on Starting a Business. For the purposes of this chapter, two points are worth

¹¹⁴ Ghana Millennium Development Authority, *Summary of the Agriculture Project and related Project Activities*, available at <http://www.mida.gov.gh/home.cfm?FilterID=1&row=6&list=119>.

¹¹⁵ *Id.*

underscoring. First, the RG's goal to begin tracking the types of businesses it registers—whether they are formed for trading, service, agriculture, and so forth—should be achieved as soon as possible. The RG is a critical source of information about the size, type, and characteristics of Ghanaian enterprises. Investors in local companies need the information that can only come from the RG.

Second, the RG has set an excellent example for other public agencies by posting and enforcing its anti-corruption policies. Specifically, visitors to the RG's Office are warned to direct their payments to the bank only and not to try to speed their service through informal payments to other staff. This is an important message, one that reflects the government's commitment to removing corruption as a force against investment in Ghana and building trust in the economy, as further discussed in this chapter's section on Social Dynamics.

BUSINESS DEVELOPMENT SERVICES (BDS).

The availability of services designed to assist new businesses in developing the capital they need to prosper in the agricultural arena is quite limited, especially outside of Accra. To a limited extent, well-informed entrepreneurs can identify knowledgeable business consultants who can help them secure sources of capital and become established in such a way that minimizes risk for investors. BDS professionals have experience securing productive facilities, such as formerly state-owned factories, as well as capital from banks, private investors, funds, and donors. They are not, however, widely available or accessible beyond Accra. Opportunities in agriculture deriving from rural areas do not typically have the benefit of sophisticated BDS.

OTHER PROFESSIONAL SERVICES.

Investors in Ghana—particularly well-resourced foreign investors—have access to a strong cadre of professional services, including lawyers, accountants, valuation professionals, and others. Lawyers and law firms routinely provide services that help investors meet their needs for more market information, understand and take advantage of investment incentives, assume their regulatory obligations, and handle international transactions. Particularly in Accra, lawyers are accustomed to performing “due diligence” requests on behalf of clients and delivering documented information pertaining to property registration, licensing requirements, tax obligations, employer obligations, trade law, and other matters.

Nonetheless, a recurring theme with respect to many professions—law, banking, accounting, and so forth—is that professionals lack expertise in the area of agriculture specifically. Thus, perceived risks are often cited as reason for not going forward with loans, investments, or enterprise growth plans, even though, as one agriculture economist said, “Risks of agriculture can be over-exaggerated” and, particularly among people who understand the sector; “they can be managed and minimized.” Law schools teach very few courses—other than Land Law—that speak directly to concerns of the agricultural sector. Bankers rarely are specially trained in special products or risk-minimizing tools pertaining to agriculture.

UNIVERSITIES.

Ghana does have a relatively sound system of education and training for **agricultural professionals**, including food scientists, agronomists, and other specialties, as well as relatively well functioning **business schools**. The **University of Ghana** and the **Kwame Nkrumah University of Science and Technology** in Kumasi are especially recognized for the high caliber of students they graduate. In the area of agricultural production, both institutions work directly with farmers, accessing them for internship opportunities and for exchanging experiences and expertise. MoFA “attracts the good students,” one representative of higher education commented, “but they often leave out of frustration.”

PROFESSIONAL ASSOCIATIONS AND NGOS.

- The **Federation of Associations of Ghanaian Exporters** (FAGE) is a private, non-governmental organization of Ghanaian exporters and importers associations. Membership comprises of over 2,500 exporting firms in a range of sectors, including agriculture, seafood, crafts, timber, textiles, minerals, and industrial materials. The primary goal of FAGE is to be the premier provider of technical and information services to facilitate transactions between Ghanaian firms and their global partners.
- The **Association of Ghanaian Industries** (AGI) is a long-established organization of Ghanaian business, including several agribusinesses, which serves as an advocate of business interests to the government. Among other services, AGI supports efforts by companies to pool their demand for accounting and audit services. Such

services are often too expensive for a single firm but are affordable when purchased as a group. Otherwise, companies typically are poor record keepers and books are either not tax compliant or not auditable. Through this service, the AGI aims to support companies in accessing finance, including direct investments from private firms, individual investors, and the donor community.

MEDIA.

Ghana's newspapers, radio, and TV stations are relatively vibrant and free compared to other countries in the region. Reporters Without Borders identifies conditions for media seeking to report fully and accurately on the news as "satisfactory," which, though comparable to neighbors Togo and Benin, is considerably better than many other countries on the continent.¹¹⁶ The quality of reporting on business news, and on agricultural matters in particular, is not considered especially strong by regular consumers of the economy-oriented media.

The media is used to a limited extent to assist farmers in better understanding the use of their inputs and in maximizing productivity. For example, short radio and television ads are used by certain larger investors to explain in local languages how farmers can best cope with weather and other conditions. This tactic has been used both with respect to crops for export and food security crops.

SOCIAL DYNAMICS

ATTITUDES TOWARD RISK.

A cross-section of observers of Ghana's investment environment—lawyers, business managers, farmers, aid professionals, and others—present a somewhat contradictory narrative about risk in Ghana. Risky behavior is reportedly endemic among smaller players, including individual farmers and some FBOs, who would stand to gain from greater formalization of their practices. Such behavior includes widespread mingling of private monies with business monies; borrowing extremely short-term credit at very high interest rates for retail ventures; failure to track farm expenditures so that a basic understanding of assets, expenses, and costs can be assessed from season to season; brazen abandonment of signed contracts with their FBOs or buyers; smuggling of certain goods into markets that promise better returns (particularly cocoa); and other high-risk behaviors. There also is "paranoia over incorporation," according to one observer, meaning that

small rural enterprises that would benefit from joining the formal sector—including the advantage of limited liability, among others—refrain from doing so.

Notwithstanding this oft-cited behavior, risk in other contexts is reportedly avoided. For example, various explanations for a large international fruit company's decision in 2007 to bypass a large investment in bananas in favor of two other African countries indicate that the opportunity appeared to many local players to be *too risky*—they were apparently overwhelmed by the perceived risks of fixed-price contracts and the challenge of overseeing a large number of privately held farms, not to mention the \$60 million price tag for investing. Wariness over full participation in FBOs is similarly a symptom of risk-avoidance, due to an absence of trust among farmers of like crops or products in the same region. The fact that contracts among smaller players are routinely ignored when the moment of sale arrives is a key component of weak trust among small players.

Risk aversion is a result of a weak system of trust, a point that was raised by many people working in various locations during this diagnostic. For the long run, trust can only be earned. Ghana is ahead of many of its peers in the developing world by having a democratic system of government that has undergone peaceful transitions of authority in the recent past (and which its upcoming presidential election will test, but likely reinforce). Ghana's democracy must continue to be guarded by ensuring that programs designed benefit the rural poor, the MiDA project in particular, in fact are perceived as reaching the people for whom they are intended. Fortunately, although Ghana has a long and unfortunate track record with petty corruption, confidence among users of government services—including land services, the courts, the RG's Office, and others—is growing. An anti-corruption program instituted by the current government has clearly improved the interactions businesspeople have with the front lines of state services, thereby contributing to increased trust. Moreover, the strengthening of Ghana's courts and other dispute resolution systems in recent years represents an important contribution to building trust in the commercial environment. The upshot of strengthened trust, of course, is a more stable environment for taking on risk and, in turn, a better context for investment. Thus, although trust is a difficult notion on which to attach specific policy reforms, it must not be neglected.

¹¹⁶ See Reporters Without Borders, *Press Freedom Map for Africa*, available at http://www.rsf.org/rubrique.php?id_rubrique=36.

THE NEED FOR LONG-TERM COMMITMENT ON THE PART OF INVESTORS.

Investment in agriculture takes time. Those who succeed in agriculture in Ghana exhibit clear awareness that time is a critical input, without which high productivity and consistent access to markets cannot be achieved. The importance of a “slow and steady” approach has long been observed by the owner of one of Ghana’s most successful poultry companies, who patiently relied on small infusions of his own profits over nearly 30 years. Similarly, a Dutch investor in mangos for export has understood from the outset that profits could not be realized before hundreds of mango trees had the chance—nearly nine years—to grow. At one shea nut trading company, the enterprise founders committed over two years to exploring various crops for export potential, before deciding to focus exclusively on shea. Thus, Ghana’s search for investors must underscore the fact that investment in agriculture is not for the impatient, but also that the government will support those who make the long-term commitment, through tax holidays, free zone advantages, and institutional preparedness when the time for export arrives.

THE NUCLEUS FARM MODEL.

Ghana’s tradition of tribe-owned land and the dominance of small farms is a reality of the investment environment, one that can not be expected to change dramatically over the next generation. Several investors have learned how to manage these conditions, and even use them to their advantage. Building and running a “nucleus farm” allows a company to produce crops on one farm under the best, most well managed circumstances, including through use of the most desirable seeds and fertilizers, proper watering or irrigation techniques, appropriate pest control, well-timed harvesting, and so forth. The outlying farms that produce the same crop for sale to the company can increase their quality and productivity by accessing the same inputs and by learning from the carefully managed farming techniques employed on the nucleus farm. The nucleus farm can also supply certain resources that single farmers or even FBOs cannot provide themselves, such as appropriate storage facilities. A company that uses the nucleus farm model is one that diminishes production risks and therefore improves its prospects for outside investment.

OPPORTUNITIES IN AGRICULTURAL INVESTMENT THROUGH PUBLIC-PRIVATE PARTNERSHIPS.

Recent experience shows that appropriate government intervention in certain agricultural activities can result in payoffs for all stakeholders—farmers, processing

companies, and rural communities in general. An experiment in using domestically produced sorghum as a substitute for imported barley in the production of Guinness beer engaged a number of partners: the Savannah Agriculture Research Institute; the Ministry of Trade and Industry; MoFA; USAID-supported technical advisors; a large group of sorghum farmers in northern Ghana; and the Guinness Ghana company. The result is that a large, private company has increasing access to an ingredient it needs in abundance and high quality, and the government is helping to facilitate increased capacity and productivity among growers. Participants find the commitment to the process gratifying, but the speed of progress to be slow. Ultimately, public-private partnerships that have the needs of paying customers at the core of their implementation strategies can benefit farmers, processors, and consumers alike.

BASIC BUSINESS PRACTICES.

A critical factor that discourages private investment into new or growing companies in Ghana is the reputedly poor financial management of small farms, FBOs, and farming enterprises—the propensity, in the eyes of many interviewees, of small players to mix business and personal assets and expenses. Because of the small size of most farming enterprises in Ghana, the most significant corporate governance issues are not high-level ones such as shareholder or director rights and responsibilities, but rather basic challenges of building into the business culture a commitment to not intermingling business and personal expenses. If small agricultural enterprises are to grow and contribute to the economy, they must observe good business practices and sound corporate governance, and implement it at an appropriate level into their day-to-day practices.

AMBIVALENCE OVER DONOR INTERVENTIONS.

Deep into Ghana’s rural areas, there is a heavy presence of multilateral and bilateral donor-sponsored organizations that underwrite a wide variety of assistance programs for stakeholders in the agricultural sector, including farmers, FBOs, and small and mid-sized agriculture enterprises. It is difficult to quantify, but clearly Ghana’s agriculture sector has been strengthened over the years by these outside interventions, including contributions to or support of investments. Along with a reform-oriented government and a generally motivated private sector, donors can take some credit for a decline in poverty in Ghana from 39.5% in 1998–1999 to 26.8% in 2005–2006.¹¹⁷

¹¹⁷ Africa Development Bank/Organization for Security and Cooperation in Europe, *African Economic Outlook*, *supra* note 104, at 342.

THE POTENTIAL OF FREE ZONES: A "BEST PRACTICE" FROM THE PHILIPPINES

Investors have "nothing but praise" for the Philippine Export Zone Authority (PEZA), a government corporation established in 1995 and attached to the country's Department of Trade and Industry. By regional standards, PEZA is considered to be an enormously effective investment promotion agency. It is known especially for its dynamic leadership; its honest, straightforward, and competent administration; and an unparalleled orientation toward customer service.

PEZA administers fiscal and non-fiscal incentives to developers of economic zones and export producers. PEZA offers ready-to-occupy locations to foreign investors that manufacture products for export or that export such services as customer assistance or software development. Among the services that PEZA provides is registration with the Central Bank of the Philippines, thus assisting the needs of exporters who need to bring foreign exchange into the country to help finance imports or pay for local services.

PEZA operates more than 112 zones located throughout the Philippines, with nearly 1,500 firms operating within those zones. Of the zones, 57 are for manufacturing; 53 are information technology parks, and two are dedicated to tourism. In 2006, PEZA zones housed 545,000 workers, with 100,000 of those added in just one year. Eighty-six% of total manufactured exports from the Philippines come from PEZA-operated zones.

What is PEZA doing right? A chorus of investors, traders, and others provided a variety of responses to this question:

- **PEZA is fast.** The process for moving goods in and out of the zones is remarkably efficient. PEZA offers a four-day turnaround between arrival of an input and delivery of a finished product to a foreign party when air shipments are used. PEZA's active role in overseeing all steps in this process and in ensuring customer satisfaction results in this high level of efficiency.
- **PEZA demands excellence from its partners.** PEZA reviews available transport companies, freight forwarders, and customs brokers and accredits those of a high standard that all zone users must employ. Only about 500 companies qualify nationwide. Reported leakages are promptly addressed, with PEZA performing the investigation.
- **PEZA is responsive.** PEZA is said to know its customers well. This is due in significant part to the fact that private companies operating within the zones are represented on its board of directors. Also, due to the fact that companies in the zones do not face an extra layer of regulation that might otherwise be enforced by local or provincial authorities, PEZA serves as the clear and singular point for solving problems.
- **PEZA is innovative.** Looking beyond the traditional use of export zones for manufacturing or IT services, PEZA is developing innovative investment opportunities in tourism, medical services, and even agro-investment, where certain products can be grown, processed, packaged, and exported, all in the same zone.
- **PEZA is assertive.** PEZA officials do not simply wait for investors to arrive. Rather, they travel to other countries and aggressively seek out new partners. Investors are recognized as important members of the Philippine economy, and PEZA leadership works with current investors to see how they can use the zones to continue to grow their businesses.

Through PEZA and its effective use of special export zones generally, the Philippines sets an important regional and international example for how to encourage outside investment.

Nonetheless, the donor community should be mindful of perceptions of their interventions that reveal certain frustrations, resentments, and misunderstandings. First, there is a widespread view that outside assistance is a “leaky bucket.” That is, as expressed by a representative of a small rural bank, there is a belief that “donor money goes into people’s pockets.” As posited by a Kumasi-based farmer, “the money that goes to the government goes to favorites and people with connections.” There is particular anxiety in the agricultural sector over the future interventions by MiDA. High expectations have not yet been met, as materialization of MiDA commitments have, as of September 2008, not yet taken place, due to the slow pace of procurement and other bureaucratic issues.

There are also major concerns about sustainability. “Once donors leave, [their projects] are done,” according to a local aid professional. The “problem with the disappearance of donors” was of particular concern: “When donors leave without having integrated their work directly into Ghanaian institutions,” the aid professional observed, “then the whole thing vanishes.” Local aid professionals are further concerned that “donors are doing the work that the government should do.”

Another concern was expressed by a representative of a government agency in Accra that is on the receiving end of donor assistance. The salary of a consultant paid by an outside agency, he said, is considerably higher than the highest-paid employee of his agency. This is “bad for morale,” he said.

Aid effectiveness is a concern among development agencies throughout the world, and steps have been taken to address the issue on a macro level. It appears, though, that serious consideration of the cumulative impact of donor involvement in Ghana’s agricultural sector is warranted, and lessons learned from past experience should be generated and shared.

RECOMMENDATIONS

- Through a model that provides for sustainability and continuous updating, create a single, online repository of commercial laws.
- Without recreating donor-supported work that has been done in the recent past, move forward with the creation of a workable law on cooperatives that supports the cooperative model as a sustainable means of local investment. Program support for FBOs—whether donor or government funded—should include widespread education of FBO participants on the content and the practical implications of this law.
- Analyze and evaluate all donor and government support directed over the past five years to FBOs with an eye toward lessons learned and pitfalls to be avoided. Identify those interventions that were started and then abandoned (such as websites or technical assistance initiatives) and determine whether they should be revisited or relaunched.
- Create linkages between more well organized FBOs and Ghana’s business schools, developing partnerships in marketing and business development services.
- Update the Companies Code to reflect modern trends in corporate governance, with an emphasis on increasing transparency and serving the particular needs of smaller businesses and agribusiness.
- Within the Registrar General’s Office, implement a means of tracking the number of agricultural enterprises established and publish this information on a regular basis.
- Review, update, and create an informational maintenance plan for all state-sponsored websites oriented toward investment, including those belonging to the GIPC, the Free Zones Board, MoFA, MiDA, EDIF, the courts, and others.
- Through a model that provides for sustainability and continuous updating, create a single, online source of information pertaining to venture capital.
- Conduct an in-depth study of Ghana’s use of the free zone model as a means of supporting agricultural investment. Using lessons learned from other countries and experiences of local companies using the model, evaluate how strengthened government commitment to free zones can result in stronger investments.
- Introduce courses in law and business professional programs that directly pertain to the agricultural sector.
- Promote continuing training among bankers, lawyers, business development professionals, and others about specific investment issues pertaining to the agricultural sector, with an emphasis on managing risk.

- Support public awareness and training on good business practices and basic corporate governance through organizations and programs directed at small businesses and FBOs. Create education and training programs on basic business management, with a special emphasis on training rural entrepreneurs.
- Evaluate and act upon lessons learned from the vast presence of donor assistance in Ghana's agricultural sector:



PAYING TAXES

The rate at which individuals and business entities pay their taxes reflects the capacities of a state and the health and vibrancy of an economy. The fairness and efficiency of a tax system can have significant impact on whether entrepreneurs (particularly smaller and micro-enterprises) and individual citizens choose to join the formal sector. If they believe that the tax system is fair and that the state will use their tax revenues wisely, they are more likely to participate.

PAYING TAXES	
<i>Doing Business</i> Ranking 2009	65
<i>Doing Business</i> Ranking 2008	83
Payments (number)	33
Time (hours)	224
Profit tax (%)	8.1
Labor tax and contributions (%)	14.1
Other taxes (%)	0.6
Total tax rate (% profit)	32.7

A state with a larger tax base can typically pursue more growth-oriented priorities, including expenditures on public goods such as education, health, and infrastructure. Moreover, when more individuals and businesses participate in the tax system, the state can reduce the amount of the payments it seeks from each taxpayer. By contrast, if a country's tax system is perceived as excessively burdensome or unfair, or if the citizenry perceives the state as being a poor steward of its revenues, informality may persist with fewer enterprises participating in tax system and fewer economic benefits will result.

It is widely agreed that agricultural taxes in Ghana are not prohibitive and most producers can readily minimize the taxes that they pay. Tax collection is weak, not just for agriculture but everywhere; there are too few Internal Revenue Service (IRS) tax centers in the country. Moreover, Ghana's tax system is said to be subject to patronage so that certain interests are not touched by the tax system. IRS processes and documentation are seen to be cumbersome and slow, but ultimately functional.

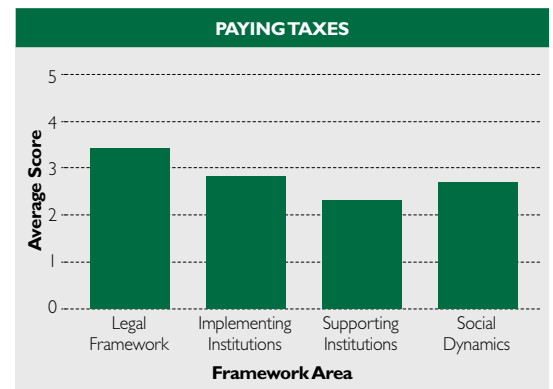
As illustrated above, the World Bank's *Doing Business* report ranks Ghana relatively well in its Paying Taxes category (65th out of 181 countries surveyed) and it is

the area in which Ghana improved the most in the *Doing Business* survey in 2008. The AgCLIR indicator scores, displayed in the graph on this page, indicate that significantly more could be done to serve the agricultural sector in this area. With the exception of legal framework, all facets of the AgCLIR review are scored in the "more negative than positive" zone.

LEGAL FRAMEWORK

Tax requirements for agriculture and other sectors are set out in Section 11 of the Internal Revenue Act of 2000. Taxes specifically relating to industry are in Subsection 7 of the statute. Section 11 allows agricultural processors to have a five-year tax holiday starting from the first year of commercial production. The Customs, Excise and Preventive Service (CEPS) was established under the provisions of PNDC Law 144. CEPS is the national agency charged with the responsibility of collecting import duties, import VAT, export duty, petroleum tax, and other taxes that may be determined from time to time by the government.

The tax regime that started in 1998 had a single rate but since September 2007 entered into a multiple rate regime. In 1998, the rate of tax was 10% and amended



in 2000 to 12.5%. However, with the passage of Act 734 of 2007, a 3% VAT flat rate scheme (VFRS) began to operate for the retail distribution sector. This allows retailers of taxable goods under Act 546 to charge a marginal 3% on their sales and account for the same to the VAT Service. Flat VAT is aimed at simplifying the tax system and increasing compliance. As with VAT, excise taxes on agricultural products do not exist.

The **Tax Schedule** is located in Section 2(a) detailing tax breaks by region:

Location	Tax Rate
Accra—Tama	20%
Other regional centers	10%
North/Upper East/Upper West	0%
Outside of regional centers	0%

Farm income is exempt from tax; tree crops get a 10-year tax holiday, livestock and other cash crops receive a 5-year tax holiday, cattle a 10-year tax holiday, and agricultural processing a 3-year tax holiday. Cocoa by-products also get a 5-year exemption. The proportional rates that apply to agriculture with the expiration of tax holidays do not result in smallholders and small agribusinesses paying a higher percentage of their asset values when compared to larger private agricultural enterprises.

Taxes on agricultural land are always factored into lease rates and land value is reassessed every three years. All annual rents on stool lands are collected by the state tax authority on behalf of the stool. Agriculture land lease rates range as follows:

Acres	Cedi
< 50	7–10
50–100	5–7
> 100	3–5

The duty drawback regime is legally backed by sections 40–42 of CEPS (Management) Law of 1993. Drawback is payable upon evidence that goods have been reexported demonstrated by:

1. Ghana Customs export documents endorsed by Customs authorities in both the exporting and importing countries or
2. A “landing certificate” from the importing country

Duty drawback must be claimed within 12 months from the date of export. The government of Ghana has established an escrow account with the Bank of Ghana into which monies are deposited for exporter payment.

Duties on **capital equipment** are very low, so that goods brought into the country for use in the preparation or processing of agricultural goods for export are not put at a competitive disadvantage in this regard. The IRS collects 1% withholding tax on imported commercial goods through the Ghana Custom Net (GCNet) collection system at the ports.

There is a **free trade zone** (FTZ) at the port of Tema. Tax treatment differs between companies operating within the FTZ and those operating outside of it. Taxes and incentives for companies operating within the zone include:

DUTIES:

100% exemption from payment of direct and indirect duties and levies on all imports of production and exports.

TAXATION:

100% exemption is granted to investors from payment of income tax on profits for 10 years.

- Income tax rate after 10 years does not exceed 8%
- Total exemption from payment of withholding taxes from dividends made on free zone investments
- Relief from double taxation for foreign investors and employees.

CUSTOMS:

- Customs house will operate within the zone for investors' convenience
- No import licensing requirements and minimal customs formalities.

CAPITAL/PROFIT REPATRIATION:

No conditions or restrictions on:

- Repatriation of dividends or net profit
- Payments for foreign loan servicing
- Payments of fees and charges for technology transfer agreements
- Remittance of proceeds from sales within the zone.

MANAGEMENT OF FOREIGN CURRENCY:

Free zone investors are permitted to operate foreign currency accounts with banks in Ghana.

INVESTMENT GUARANTEE:

Free zone investments are guaranteed against nationalization and expropriation.

INVESTMENT INCENTIVES:

- Corporate tax: 8% on export income, 25% for hotels, and 35% for others
- Location incentive: 25–50% tax rebates

- Tax holidays: indefinite for cocoa farming; 3–10 years depending on sector; 10-years for free zones with up to 8% corporate tax thereafter
- Tariff exemption: 100% duty exemption for production equipment.

The FTZ operates as a true enclave, with a separate clearance system for the FTZ separate from the rest of the country. This bifurcation has efficiency advantages but also leads to some commercial difficulties. Customs in the free zone operates independently of Customs outside of the free zone so that, if Ghana Customs institutes a regulatory change, free zone Customs is not automatically informed of it. Also, since the IRS does not have an office in Tema, someone from the taxpaying entity must regularly go to Accra to take care of tax matters.

As cited by one FTZ enterprise, Customs is slow and inefficient. Rapid Customs clearance requires a good deal of luck; at best a shipment might clear in a week, at worst it could take several weeks. An example of how clearance works follows:

Application for Free Zone exemption—When a shipment arrives, a firm in the Free Zone must apply for a duty free waiver. This application is done using GC Net—the application is done, not submitted. GC Net is up sometimes and down sometimes, it is slow and unreliable. If a ledger is lengthy and GC Net is having problems, simple data entry can take days. Customs will conduct an inspection to ensure that the items imported are actually imported in relation to a firm's commercial needs, which inspection can be arbitrary. After data entry and inspection, the firm must print out the ledger and then take it to Accra for processing, leaving it at the department there. The processing fee is \$50/container. There are just two people who have authority to sign the waiver and if they are both out then the firm must wait until one of them returns. No notice is provided that the waiver is signed so a firm will have to keep calling until they reach someone who can inform them. Once the waiver is signed, the firm must send someone back to Accra to pick it up. The waiver is then provided to the clearing agent, who must go through this same process all over again to clear the shipment. If a manifest is incorrect or incomplete, clearance will take even longer.

When a company's tax holiday expires, the VAT Authority must assess its VAT payment. The more valuable a company is to the economy, the more likely it will get favorable VAT treatment. In the case of one company, its 10-year duty-free concession expired this year and it now pays a 4% VAT rate.

Apart from a few items that are exempted from payment of Custom Duties, all imports may attract import duties, import VAT, and a national health insurance levy. Other levies can include an ECOWAS levy and an export development and investment levy on specific commodities. Import excise is also levied as an additional tax on some selected commodities. Import duty is calculated on the cost insurance and freight (CIF) value of the commodity while import VAT is calculated on the duty-inclusive value of the goods. Different duty rates apply to all imports whereas VAT is a flat rate.

The **Customs, Excise (Duties and Other Taxes) Amendment Act of 2008** removed import duties on the following commodities:

Commodity	Rate of Import Duty
Rice (husked, milled, polished, glazed, parboiled, or broken)	0%
Wheat	0%
Crude vegetable oils (for soap and food manufacture)	0%
Yellow maize	0%

The import duty on rice, wheat, and yellow maize formerly was 20%, while the duty rate of crude vegetable oil was 5%. Previously, the government sought to encourage the use of Ghanaian raw materials by not allowing their tax-free import. Recent concerns for food security, however, have led the government to ease duties on these staples.

Ghana's **taxes on domestic production of agricultural and agri-food products** are more favorable than those of adjacent countries in the region and to those of regional agricultural trading partners. Where food products are imported for purposes of food security or relief, efforts are made to minimize adverse competitive impact on national producers and distributors of comparable products. Taxes on agricultural products at local, regional, and national levels are transparent and accessible to all interested parties. VAT laws are easily understood and widely respected. Permits or certificates are required for exports of certain agricultural products including:

- Cocoa beans—fumigation and quality assurance by Control Division of Ghana Cocoa Marketing Board (COCOBOD)
- Manufactured/processed goods—Ghana Standards Board Certificate
- Fresh/processed fish—Ghana Standards Board Quality Assurance Certificate
- Coffee, shea nuts, and cashew nuts—COCOBOD Quality Assurance Certificate
- Food/agricultural products (e.g., yam, pineapple, plantain, palm oil)—Phytosanitary Certificate (PPRS)
- Timber and wood products—Forestry Commission permit (TIDD)

The only agricultural commodity that attracts duty is cocoa beans. All other agricultural exports have 0% duty.

The **transportation of agricultural products** is not subject to formal or informal taxes, though vehicles must pay tolls. The extent to which informal fees are levied could not be ascertained.

Water tariffs have been held at around US\$0.20 per bm^3 ,³ a rate that has not allowed for effective ongoing system operation and maintenance.

IMPLEMENTING INSTITUTIONS

INTERNAL REVENUE SERVICE (IRS).

Tax agencies provide adequate information to permit compliance across all levels of society. However, all segments of society agree that tax administration is overly centralized, often necessitating companies to travel to district or regional centers to pay the tax authorities. Reportedly, when taxpayers do travel to these centers there is no assurance that the cognizant officials will be there, so the taxpayers will have wasted their time. Moreover, there are many offices and agencies to which tax must be paid separately including property taxes, VAT, income tax, district tax, etc.

The IRS recognizes that it faces challenges in implementing its mandate of collecting taxes since it has a relatively limited geographic presence, few computerized offices, and inadequately trained staff. There are 51 IRS offices in Ghana with more planned for the future. In addition, there are three “Large Taxpayer” offices in Accra, Kumasi, and Tamale; 38 suboffices; and 25 collection points. IRS staff lack mobility; they are short of vehicles and motorcycles, making it difficult to

KEY IMPLEMENTING INSTITUTIONS

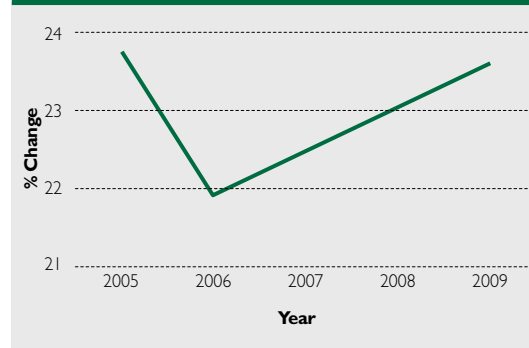
- Internal Revenue Service (IRS)
- VAT Authority
- Customs, Excise and Preventive Service (CEPS)

monitor tax compliance or conduct tax audits. In the last three years the IRS has sought to bring the informal sector into the formal sector through “dragnet” and other initiatives, as well as through tax education programs for people who are illiterate/innumerate. The recent introduction of tax stamps has served to legitimize the operations of small, informal vendors in local markets. These stamps are paid quarterly and the fees are graduated according to an enterprise’s turnover. How turnover is assessed is not entirely clear but is linked to a vendor’s location in the market. By paying for tax stamps vendors can operate free from some degree of harassment by IRS and other officials, although other benefits, such as access to water, electricity, security, or other services, are uncertain and are related to their general availability in the market.

VAT AUTHORITY.

Company audit reports must be held for six years and government audits are subject to four-year investigations; that is, up to four years of records can be investigated. VAT auditors conduct their audits more frequently than do IRS auditors, auditing many businesses annually. VAT auditors are highly specialized focusing only on VAT and are generally professional. The ownership structure of a firm drives the audit requirements (i.e., shareholder, sole proprietor).

GHANA TAX REVENUE



There are provisions for appeals in the event of disputes over the levies assessed against agricultural or agribusiness concerns. The IRS has a specific administrative office to deal with appeals. When taxpayers successfully challenge an assessment, an award is made as credit

“All segments of society agree that tax administration is overly centralized, often necessitating companies to travel to district or regional centers to pay the tax authorities.”

rather than cash. According to many firms, the main problem with the IRS is that the rules governing tax assessments are not clear, so it becomes necessary for firms to hire tax advisors to help address such issues.

Police and military personnel do not engage in tax collection activities. Collection activities are normally performed by officials of government tax agencies, by representatives who have been officially appointed by such agencies, or by the court system, to assist in the collection process.

CUSTOMS, EXCISE AND PREVENTIVE SERVICE (CEPS).

As a frontline agency, CEPS plays a key role in presenting the face of Ghana to the rest of the world and plays a determinative role in ensuring the soundness of Ghana's trade regime. CEPS performs several functions and operates under the legal basis provided by the CEPS Management Law (1993). CEPS is responsible for collection of all duties and taxes except for the excise duty, which is collected by the VAT Authority (except on petroleum products, which the CEPS collects). Approximately 35% of the country's tax base is collected via the CEPS.

A heavy reliance on Customs collections and meeting national revenue targets has caused some in the Ghanaian Customs community to worry that this pressure is counter to the long-term goals of CEPS. Revenue-targeting pressures were reported to include the use of high-level government officials visiting Customs outposts to encourage collection to "further development needs" by generating revenue for the government. This has the potential to cause arbitrary measures in order to raise collections, including increasing the number of unwarranted inspections and seizures, penalties, or the misclassification of goods to achieve higher duty rates. These practices would run counter to international trends toward using risk-based profiling and minimizing regulatory burden to improve efficiency.

SUPPORTING INSTITUTIONS

GHANA CUSTOMS NET (GCNET).

Over the past few years, Ghanaian officials have led the creation of a joint venture "single window" public-private partnership called **GCNet**. GCNet was created to improve not only the efficiency of Customs and its sister agencies responsible for processing trade in Ghana, but also the revenue collection for the country. Joint venture partners include S.G.S (private), CEPS, Ecobank Ghana (private), Ghana Commercial Bank (government

controlled), and the Ghana Shippers Council. GCNet operates as a for-profit company with cash flow generated from a network charge levied on all customs declarations.

Prior to GCNet, paperwork submitted for importing and exporting was highly redundant and error prone. Traders were required to move from one agency to the next, with implementing agencies unable or unwilling to communicate—which created substantial opportunities for facilitation payments and unnecessary delays.

KEY SUPPORTING INSTITUTIONS

- Ghana Customs Net
- Accountants and auditors
- Association of Ghanaian Industries

ACCOUNTANTS AND AUDITORS.

The sole organization regulating these professions is the **Institute of Chartered Accountants (Ghana)**, which was established by an act of Parliament, Act 170, in 1963. Its members are the only persons recognized under the Companies Code (Act 179) 1963, to audit company accounts.

ASSOCIATION OF GHANAIAIN INDUSTRIES.

This institution supports efforts by companies to pool their demand for accounting and audit services. Such services are often too expensive for a single firm but are affordable when purchased as a group. Otherwise, companies typically are poor record keepers and books are either not tax compliant or not auditable. Poor bookkeeping compounds the problems of getting finance since the banks have difficulty ascertaining borrower quality. Evidence of this problem is the existence of many donor SME funds that remain largely untapped (e.g., GTZ). There is little to be gained from a government-sponsored tax holiday to encourage informal transactions into the formal sector since taxes are not generally prohibitive.

SOCIAL DYNAMICS

The agricultural community generally recognizes its responsibility to pay fair and reasonable taxes. First, there are not many taxes to avoid in the agricultural sector. Between favorable tax holidays, VAT, and other exemptions, agribusinesses do not face restrictive taxes. Second, a surprising number of SMEs use auditing services, which tends to keep them honest. The quality of auditors is another matter, but the intention to maintain such records is commendable. Individual

farmers and agribusinesses, as well as the associations that represent them, understand the correlation between taxes paid and public services received.

For those firms that pay VAT, the threat of a VAT audit is sufficient stimulus to sound bookkeeping. Tax evasion has become increasingly difficult since the introduction of VAT, as VAT audits provide an independent accounting of a company's books, which should match up to their income statements. If caught, fines are large and VAT authorities are practiced at shaming offenders, for instance, by tying VAT tape around the offender's office premises.

Before growers and agribusinesses can enjoy the use of water for irrigation, they must pay for permits from the Irrigation Authority and the Environmental Protection Agency. Initial permits and other fees are one type of water tax. Irrigation districts, as such, do not exist, but water use is taxed at varying rates across these irrigated areas.

The agricultural community recognizes its right and responsibility to challenge tax assessments that are not calculated in a transparent manner or for which commensurate value is received. The law provides for challenges in the event of perceived inequity in tax rate application. The IRS sends businesses a tax pre-assessment from its forecast of their annual revenue, based on revenue from the prior year. A business can object to a pre-assessment rate that is too high. At the end of the tax year the business sends the IRS a statement of accounts and the IRS does a restatement of the pre-assessment if necessary. There is no apparent stigma attached to challenges by agriculturalists against assessments on the grounds of inequity or improper application of tax law.

One processor made the point that industries were taxed even before they started production. This is a firm, which is processing meat products including poultry into sausages, ham, bacon, etc. It makes innovations on new products with the use of local spices such as ginger, chili pepper, and others. The point is for tax holidays to be granted over a period that will enable the "infant" industry to mature before taxation. For the strategic area of processing, there needs to be the necessary tax incentives to encourage investment. The complaint from some of the firms is that Ghana seems to grant better incentives to foreign investors than to the local investor, given the range of tax holidays, foreign exchange retention, and access to land and utilities available.

Poultry grower association members, while exempt from federal income tax, must still pay district taxes. These

taxes include (1) an operations tax that is assessed on the number of birds that a farmer keeps and (2) a property tax assessed on the number of improvements and size of land holding. Farmers complain that taxes seem high and somewhat arbitrary, since the assessors do not do site inspections but estimate taxes from the prior year's revenue. Farmers can challenge an assessment but the odds of sustaining the challenge are against them. Tax estimates always go up, never down. Some FBOs claim that every year they must undergo an audit.

RECOMMENDATIONS

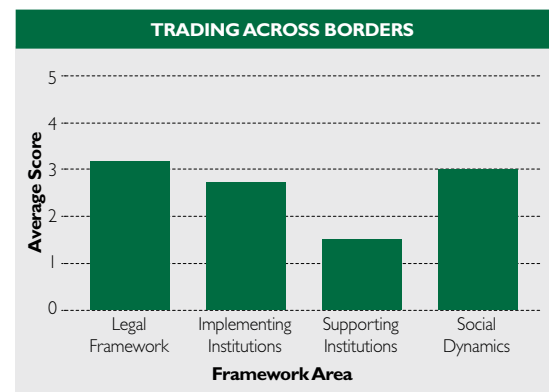
- Implement existing laws and regulations more effectively. The tax code is widely acknowledged to be reasonable. With more effective implementation of the existing legal framework, perhaps some further improvements would be necessary.
- Establish more IRS offices in secondary cities to better service these and surrounding populations. Currently, agribusiness and other entrepreneurs must often travel far to pay their taxes; this inconvenience takes them away from their business and increases their costs for travel and other items. The IRS should have an office in Tema.
- Institutionalize and enforce standard operating procedures that require staff to always, always be in IRS offices on a published work schedule. Many incidents were cited of an IRS assessor not being available after a taxpayer had spent time and money to reach the office to pay taxes.
- Improve tax assessment procedures so that they are less arbitrary. Certain evidentiary claims (i.e., business losses, disasters) should be an acceptable basis for revising tax assessments downwards without having to appeal. Tax pre-assessment should be based on actual conditions versus prior year tax payments.
- Improve training of accountants and auditors so that they better appreciate cash flow issues unique to agriculture. Seasonality, losses, and gains are generally different for agriculture than for other sectors, yet accountants and auditors have not been very savvy on their handling of agribusinesses.
- Prohibit taxing business start-ups during the first six or so months, as this practice is contrary to private-sector growth.
- Strengthen the capacity of the Irrigation Development Authority to support irrigation schemes through simplified registration and fees, and to adequately assess and levy water use tariffs, including their timing.



TRADING ACROSS BORDERS

In its second iteration of its Growth and Poverty Reduction Strategy, Ghana's government recently set an ambitious target of 2015 to reach middle-income status.¹¹⁸ It is fair to say that, as agricultural growth goes, so goes the Ghanaian economy: as stated at the outset of this report, the economy remains heavily reliant on agriculture, accounting for over one-third of GDP and over 55% of employment. At the heart of the government's economic growth strategy lies its desire to increase and diversify agricultural-related exports.¹¹⁹

TRADING ACROSS BORDERS	
<i>Doing Business</i> Ranking 2009	76
<i>Doing Business</i> Ranking 2008	63
Documents for export (number)	6
Time for export (days)	19
Cost to export (US \$ per container)	1003
Documents for import (number)	7
Time for import (days)	29
Cost to import (US \$ per container)	1130



Ghana has made substantial progress in recent years toward creating an environment conducive to domestic and international trade in agricultural products. Macroeconomic stability is markedly improved from 10 years ago: inflation is at 10% down from 30% in 1998; the fiscal and external deficits have improved; and the debt burden was brought to a more manageable level. The freely convertible cedi is now competitive among a basket of currencies based on a managed float.¹²⁰

In addition to the increasingly stable macroeconomic environment, the trade regime is relatively liberal. Ghana's government has removed import and export prohibitions, eliminated wasteful subsidies, and reduced the number of tariff bands to four (0%, 5%, 10% and 20%), with agricultural imports facing the highest average tariffs at 15.6%.

But fundamental constraints to Ghanaian food security and the competitiveness of Ghanaian agribusinesses remain. These include access to land, water, skilled labor, appropriate finance, electricity, and infrastructure, which each present significant challenges to growing a productive agribusiness sector. Meeting the growth and diversification targets set by the government will require an ambitious reform program.

This chapter assesses the enabling environment for trade in agricultural products as a continuum of activities from the "farm gate" to the end market, with an eye toward systemic reforms that would, if undertaken, benefit multiple value chains. From producer knowledge of end markets to storage and processing, to trade facilitation and trade policy, this chapter addresses issues of particular significance to agribusinesses producing for local, regional, and international markets.

The World Bank's *Doing Business* report ranks Ghana relatively well in its Trading Across Borders category (76 out of 181 countries surveyed). The AgCLIR scores arrived at in this diagnostic, however, show that grave constraints in the agricultural sector remain, however. Three of the four facets of the review tend toward finding more negative than positive attributes within the trade regime, with only the legal framework falling at the line between negative and positive. Accordingly, this chapter raises many points about opportunities in Ghana's international trade in agricultural products and makes a number of recommendations for continued reform.

¹¹⁸ Government of Ghana, *Growth and Poverty Reduction (GPRS II) Medium-Term Strategy (2006–2009)*.

¹¹⁹ See, e.g., Ghana's *Export Strategy (2008)*.

¹²⁰ J.S.L. Abbey et al., *Study on the Appropriate Exchange Rate Regime for a Competitive Export Led Growth Strategy for Ghana* (USAID TIPCEE Project, 2007).

LEGAL FRAMEWORK

Ghana's legal framework pertaining to international trade is readily available and easy to use, but insufficient for rapid trade expansion. In many cases the law is either incomplete or out-of-date. There is no legislation (or part thereof) on competition, rules of origin, customs valuation, safeguards, or trade in fertilizer or plant varieties. Other laws desperately need revision to bring them up to international standards, including the Food Law, the Standards Decree, and the Seed Law.

ACCESS TO LAW.

All of Ghana's trade laws are available for a fee via DataCenta Ltd., a company established by a prominent Ghanaian lawyer in recent years as a resource for Ghanaian law. Additional sources of legal information relevant to Ghanaian agribusiness include a World Bank-financed website for all sanitary and phytosanitary (SPS) issues and technical barriers to trade (TBT) related laws/regulations.¹²¹ Further, the Ghana Community Network Services (GCNNet)¹²² provides access to all import and export procedures.

Laws in Ghana are only available in English. Although this is not ideal in a country with a vast non-English-speaking population, interviewees expressed no need to translate existing laws into other local languages.

INTERNATIONAL AGREEMENTS.

Ghana has established a regime of treaties and agreements that supports international trade in agricultural products. The country is an active member of the World Trade Organization (WTO) and a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. It is not a

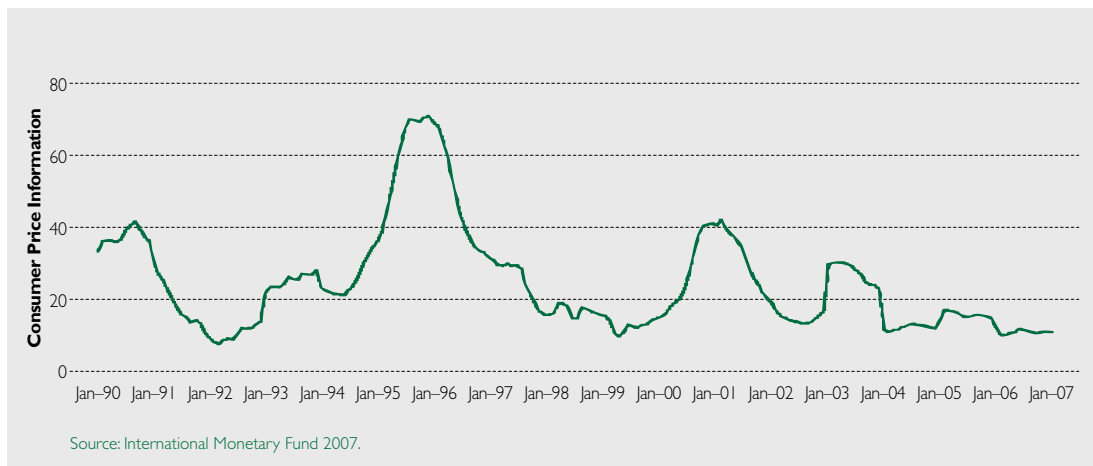
signatory to the International Sale of Goods Convention. Ghana is a founding member of the Economic Community of West African States (ECOWAS).

As part of ECOWAS, Ghana has been implementing a trade liberalization scheme (TLS) since 1990. The initial objective was to establish a free-trade area by removing all barriers to trade in goods and services between member states by January 1, 2000. A common external tariff (CET) was scheduled to come into force by early 2004 to finalize the establishment of the customs union. Both the CET and the TLS have been delayed on multiple occasions. It is unclear when they will be back on track.

GHANA'S TRADE REGIME.

The government of President John Kufour has publicly committed to international trade as a development tool on numerous occasions. Programmatic expressions of this commitment include the Trade Sector Support (TSSP) program, a MoTI-led plan to make strategic improvements in the business environment in order to reduce the cost of doing business for traders and ultimately increase the international competitiveness of Ghanaian companies. The government also supports the Gateway Program, which, according to the Ghana Ports and Harbours Authority, has four objectives: (1) to attract a critical mass of export-oriented investors; (2) to accelerate export-led growth; (3) to facilitate trade; and (4) to position Ghana as the gateway (and trade base) to the West African region. Together, these initiatives are dedicated to improving the trade environment through legal, regulatory, and institutional reform.

The Export and Import Act 1995, the Customs and Excise Act 1993, the Food and Drug Law 1992, and the Prevention and Control of Pests and Diseases of Plants



¹²¹ See <http://www.sps-tbt-ghana.org/>.
¹²² See <http://www.ghanatradenet.com/home/>.

Act 1965, among other framework laws, empower CEPS, MoTI, and other competent authorities who regulate the flow of agricultural products—such as the Ministry of Food and Agriculture or the Plant Protection and Regulatory Services under the Ministry of Health—to implement the country's international trade regime. These framework laws clearly define the institutions responsible for implementation of laws relating to trade and the roles, responsibilities, and operational procedures of each relevant institution. They require that the institutions render decisions based on published laws, regulations, and standards, and through written documentation clearly setting forth the basis for the decision. This body of law grants CEPS, the Ghana Standards Board (GSB), the Food and Drug Administration (FDA), and PPRS the power to hold and quarantine goods for import, export, or transshipment that violate sanitary or phytosanitary standards, intellectual property protections, or other trade-related domestic standards.

TRADE FACILITATION.

Prudent and effective international trade facilitation includes the provision of high-quality government services, predictability and consistency of government procedures and regulations, overall transparency of the system, and building and maintaining an anti-corruption environment for business. Many countries, including Ghana, recognize that capable and responsible government operations are a prerequisite for development.

Initiatives are under way in Ghana to reduce bureaucratic delays and uncertainties in servicing the business sector and in ensuring integrity, responsiveness, rule of law, transparency, and regulatory consistency for their business community. These initiatives create an enabling environment for increased private sector growth and investment.

Modern customs trade facilitation essentially strives to end unnecessary and unproductive trade barriers and constraints by applying modern techniques and technologies and by improving the quality of necessary controls in a manner that reflects factors consistent with recognized international standards.

DESTINATION INSPECTION.

In March 2000, the government abolished pre-shipment inspection in favor of a destination inspection scheme (DIS). The DIS is supported by a computerized risk-management system, physical inspection, and gamma and x-ray scanning. All imports are subject to inspection, regardless of their value. The government

KEY LAWS

Current Laws

- Customs Excise and Preventative Service 1993
- Customs Excise and Preventative Service, Rates Duties and Other Taxes, 1994
- Export and Import Act, 1995
- Ghana Export Promotion Council Decree, 1969
- Ghana Standards Board, General Labeling Rules, 1992
- Seeds (Certification and Standardization) Decree, 1972
- Food and Drugs Law, 1992
- Food and Drugs Amendment, 1996
- Protection Against Unfair Competition Act, 2000
- Ghana Ports and Harbours Authority Law, 1986
- Prevention and Control of Pests and Disease Plants Act 1965
- Pesticides Control and Management Act 1996
- Animals (Control of Importation) Ordinance
- Standards Decree, 1973
- Certification Mark Rules, 1970
- Weights and Measures Decree, 1975

Draft Laws

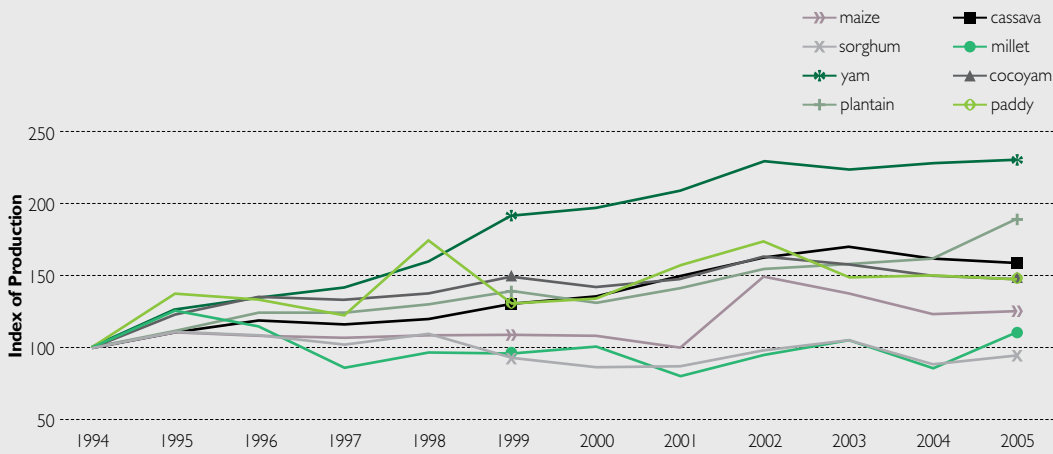
- Draft Seed Law, Currently under review (expected in Parliament September/October 2008)
- Draft Plant Quarantine Law (Currently in Parliament)
- Draft Plant Varietals Bill (Drafted 2002, under Agency review)
- Draft Biosafety Bill (Drafted 2004, under Agency review)

has negotiated an inspection fee of 1% CIF value for each of the six private companies that are contracted to carry out the work. Although pre-shipment inspection was abolished in favor of destination inspection, persons interviewed for this diagnostic reported being confused by the rules of each. A general lack of understanding of rules at the ports (including the airports), and vis-à-vis customs procedures is clearly evident within the private sector engaged in international trade.

PAPERWORK.

The regulatory burden on trade found in Ghana frequently arises from the number and complexity of trade-related permits mandated by law. The burden tends to be particularly heavy for perishable goods. For

TRENDS IN FOOD CROP PRODUCTION, 1994–2005



Source: MoFA, SRID, World Bank Graph

a country that relies on its agricultural economy, it is important to make sure that this regulatory burden is not so restrictive as to cut off or disincentivize trade in perishable goods all together.

Interviewees noted two points in particular with regard to the permits required to trade in perishable products (or the inputs necessary to grow them). First, despite efforts to create a single window using GCNet, significant duplication of permit/licensing documentation still exists. Second, the requirement of a new permit each time a shipment comes into or leaves the country is particularly burdensome. Interviewees would favor annual licensing as an alternative.

DUTY DRAWBACKS.

The Customs, Excise and Preventative Service (Management) Law, 1993 provides for duty drawback on imports used in the products bound for export markets. In order to claim drawback, an exporter must submit an application for claim of the drawback together with documents proving the veracity of the claim to drawback. Exporters complain that reimbursement actually depends on the availability of funds. Frequently the funds are not available, causing delays of six months to a year before exporters' being reimbursed the import duties. For the duty drawback scheme to work as an incentive—as it is designed to do—it needs to drastically decrease the turnaround time of this procedure. One proposal is to hold the funds in short-term, interest-bearing treasury bills, in order to guarantee the availability and prompt payment of funds.

GOVERNING CUSTOMS OPERATIONS.

Interviewees mentioned two operational issues of particular import to a discussion of the legal and regulatory regime for trade. First, they reported a significant gap between the legal framework regulating customs brokers and reality. Reports of poorly trained and “illegal” customs brokers were common. While the relevant law mandates a written examination to obtain a broker's license, brokers noted that this exam was not sufficient to dissuade poorly trained individuals from acting as customs brokers. Second, exporters noted the inefficiency in obtaining the certificate of origin (COO) required to export. The Assistant Commissioner is the only position vested with the authority to sign the COO, something that multiple clearance agents decried as inefficient and burdensome.

TRADE POLICY MEASURES.

Tariffs and regulations dealing with importation of agricultural products and foodstuffs have a mixed record of facilitating access by agriculture and domestic agribusiness to the goods and services they require. On one hand, the body of trade-related law tends to acknowledge the importance of, and protect, access by agribusinesses to imported fertilizers and crop protection materials. And import requirements tend not to be overly onerous (e.g., SPS legislation broadly in line with international norms); implementation of this liberal regime has a far poorer record, however. Import delays are said to be common, based in part on unclear and poorly disseminated import rules. Interviewees frequently mentioned the need to pay bribes to clear their goods upon import.

COMPETITION.

The Protection Against Unfair Competition Act, 2000 does not have legislation specifically governing important issues, including abuse of dominant position, collusion, or price fixing. The Protection Against Unfair Competition Act is limited to a focus on “fraudulent competition,” including deceptive labeling, confusing use of trademarks, or misleading information product or service characteristics.

CONTINGENCY MEASURES.

Ghana has no legislation on contingency measures including anti-dumping measures, safeguards, or countervailing duties. Rapid import growth has had a substantial impact on the Ghanaian poultry sector since 2000. Imports have grown to levels that may qualify as surges and be justified by claims of “injury” under the WTO’s Article XIX. The term “dumping” is not widely understood by either the media or players in the agricultural economy who tend to be broadly supportive of subsidies and higher import tariffs in order to promote and protect the local industry.

TRADE IN PERISHABLE COMMODITIES.

Sanitary and phytosanitary (SPS)¹²³ measures and technical barriers to trade (TBT)¹²⁴ are particularly relevant to trade in agricultural products. The perishable nature of agricultural goods and the fact that they are frequently used for human and animal consumption make agricultural-related products highly regulated. Protecting human, plant, and animal health is enormously important to agribusiness trade. But SPS measures can also pose enormous barriers to agribusiness and the flow of agricultural goods. They are established to reduce significant risks to humans, animals, and the environment, as in the case of international transmission of avian influenza or foot and mouth disease. If SPS rules are written and interpreted too strictly or on the basis of no scientific evidence, however, they can become a major impediment to trade to a halt. A sound and workable SPS regime relies on good science thoughtfully and fairly administered. The Food and Drugs Law 1992, the Prevention and Control of Pests and Disease Plants Act 1965, the Pesticides Control and Management Act 1993, and the Plant Quarantine Law and Standards Decree together form the basis of Ghana’s SPS regime.

Ghana is party to, and observes, international standards concerning foodstuff, and has issued laws regulating foodstuff. Manufacturing, distributing, importing, and exporting of foodstuff is governed by the Food and

Drugs Law 1992 (amended 1996). The Food and Drugs Law makes reference to various relevant international bodies but does not include reference to those of the Codex Alimentarius Commission. To bring the Food and Drugs Law into line with international best practices the government needs to amend the law in order to include Codex standards.¹²⁵

Ghana has been a member of the International Plant Protection Convention (IPPC) since its inception. It ratified the convention in 2003. Legislation and regulations vest plant protection authority in the hands of the Plant Protection and Regulatory Services (PPRS). The Prevention and Control of Pests and Diseases of Plants Act 307, adopted in 1965, is not in compliance with IPPC 1997. According to the MoTI TBT/SPS website, this is well known within the Ministry of Agriculture and PPRS. In 2005, the Ministry of Agriculture submitted an updated law for review by the cabinet. PPRS is reported to have submitted the new legislation to the International Plant Protection Convention (IPPC) and the Food and Agriculture Organization (FAO) for review and are awaiting their response before preparing another draft for the cabinet’s review.

Key issues to address include the following:

- **Animal feeds.** No existing legislation.
- **Biosafety (pending).** A draft law on biosafety was written in response to interest in genetically modified organisms (GMOs). The draft law aims to regulate all biotechnology activities including use, release into the environment, placement in the market, export, import, and transit of GMOs.¹²⁶
- **Fertilizer law.** There is a draft fertilizer law rumored to be submitted to the Parliament in the fall of 2008. Once it has passed, responsibility for its implementation will rest with PPRS. MoFA licenses the import and distribution of fertilizer, on the basis of an administrative decree.
- **Prevention and Control of Pests and Diseases of Plants Act (1965).** The law handles prevention and treatment of pest diseases of plants and plant quarantine issues. According to government officials interviewed for this report, and this author’s own analysis, the law’s main deficiencies are twofold: (1) international cooperation on risk analyses and data sharing absent from the legislation, and (2) insufficient financial penalties for violation of the law.

¹²³ SPS measures are defined as any measures applied to protect human or animal life from risks arising from additives, contaminants, toxins, or disease-causing organisms in their food; to protect human life from plant- or animal-carried diseases; to protect animal or plant life from pests, diseases, or disease-causing organisms; to prevent or limit other damage to a country from the entry, establishment, or spread of pests. See website of the World Trade Organization, available at www.wto.org.

¹²⁴ TBT generally result from the preparation, adoption, and application of different technical regulations and conformity assessment procedures.

¹²⁵ Alex Owusu-Biney et al., *National Biosafety Framework for Ghana* (Ministry of Environment and Science, 2004).

¹²⁶ Id.

- The Plant Quarantine Law (pending).** According to research done by the World Bank, the new Plant Quarantine Law pending in Parliament covers most of the International Standards for Phytosanitary Measures (ISPM). However, ISPM # 11 (pest risk analysis for quarantine pests including analysis of environmental risks and living modified organisms) and the newer ISPM, which were issued in 2007, including those relating to the establishment of pest-free areas (ISPM 26 and 29), and which are of particular relevance in the control of the fruit fly are not included.¹²⁷
- Food and Drugs Law 1992.** The Food and Drugs Law (FDL) was enacted to control the manufacture, importation, exportation, distribution, and use of foods, drugs, and other consumer products. In line with its mandate, the FDL prohibits the sale of unwholesome, poisonous, and adulterated foods. The FDL also prescribes standards for foods. The current law prescribes a great deal of redundancy in SPS-related institutions including the Food and Drugs Board and the Ghana Standards Board. Moreover, the law needlessly concentrates activities in Accra, a considerable distance from most agricultural producers. International standards including Codex Alimentarius have not yet been incorporated into the law, and definitions and terminologies in the law still need to be harmonized with international best practices (i.e., Codex), as stated above.
- Standards Decree 1972.** The Standards Decree was established to ensure the high quality of goods produced in Ghana, for local consumption and export, to promote standardization in commerce, to promote industrial efficiency, and to promote standards in public and industrial welfare. In tandem with the pending Food and Drugs Law, the Standards Decree creates what some might consider an overly burdensome environment for production and trade in agricultural-related goods. For instance, certification and conformity assessment inspections conducted by the Ghana Standards Board (GSB) would overlap with registration-related inspections carried out by the Ghana Food and Drugs Board (FDB). These and other overlapping inspections add unnecessary delay in trading of agricultural-related products.
- Seeds Certification and Standardization Decree.** Access to improved seed is one of the most critical changes necessary to enabling agribusiness growth in Ghana. The current legal authority to import improved seeds is set by the Seeds Certification and Standardization Decree, 1972, which people knowledgeable about the law reported as “completely deficient” based on a number of criteria. First, it vests too much control in the hands of the Grains and Legumes Development Board, the sole entity vested with the legal authority to import breeder and foundation seeds for staple crops into Ghana. The Grains and Legumes Development Board is said to be “incapable” of producing or distributing sufficient improved seed for the needs of a 23-million-person country. *De facto* responsibility for these functions goes to the Savannah Agriculture Research Institute (SARI) and the Crop Research Institute (CRI), which are similarly under funded and understaffed to fulfill their mandates. Neither SARI nor CRI has financial incentives to produce better seeds. Second, the current framework fails to adequately define a vision for promoting the growth of a private-sector-led seed market. Last, one interviewee knowledgeable about international seed agreements noted that the current seed law does not conform to regional or international best practices as articulated by the Organization for Economic Cooperation and Development (OECD), the International Union for the Protection of New Varieties of Plants (UPOV), or the International Seed Testing Association (ISTA). To this end, the Millennium Challenge Corporation is working with the Ghana’s Millennium Development Authority (MiDA) to develop a new seed law, as discussed in this report’s chapter on Dealing with Licenses.

IMPLEMENTING INSTITUTIONS

CUSTOMS ENFORCEMENT AND PROTECTION SERVICES (CEPS).

A modern Customs service has to strive for transparency, predictability, and fairness in its dealings with international trade community. For a truly facilitative environment, it is critical that the laws and regulations governing the import and export of materials and goods provide the following:

¹²⁷ World Bank, Ministry of Food and Agriculture Food Safety Task Force, *Revised Food Safety Action Plan* (2007).

- An adequate and coherent authority structure for the essential trade-related institutions
- Clearly stated regulations and procedures that form a basis for an adequate balance between facilitation and necessary controls essential for public health and welfare
- The means to legally employ modern risk-management techniques utilizing selective inspections and post-release audits to accomplish their respective missions
- A productive environment of cooperation and procedural coherence with the other government agencies with border control responsibilities
- A cooperative and consultative atmosphere of dialog between government agencies, the international trade community, and the national legislature to accomplish goals and eliminate roadblocks.

As a frontline agency, CEPS plays a key role in presenting the face of Ghana to the rest of the world and a determinative role in ensuring the soundness of Ghana's trade regime. CEPS performs several functions and operates under the legal basis provided by the CEPS Management Law (1993). CEPS is responsible for collection of all duties and taxes except for the excise duty which is collected by the VAT Service (except on petroleum products, which CEPS collects). Approximately 35% of the country's tax base is collected via CEPS.

Cargo Examination and Destination Inspection.

CEPS maintains 69 Customs stations, and based on a computer-based risk model, goods are directed toward a green, yellow, or red channel. Each color is associated with the risk threat of a specific shipment. High risk (i.e., red) goods have to register with the Ghana Standards Board. In 2000 the government introduced destination inspection (DI) services, moving from a pre-shipment inspection (PSI) regime, in an effort to reduce the volume of physical inspections while maintaining the same level of security and revenue collection. The DI program is a more relaxed version of PSI that requires that the overseas shipper furnish a copy of the sales contract and invoice. Under DI documentary verification of importers, declaration is performed in Ghana using the contractors and Customs system while consignments requiring physical verification are inspected upon arrival in the country.

Originally a public-private partnership (PPP) with a 70% equity stake from Cotecna's local affiliate, Gateway Services, the PPP destination inspection company was

split in 2003. Whereas the original investment by Cotecna was made under the assumption that there would only be one conglomerate handling DI, the PPP was broken up and the market was split into four pieces in 2003 on what was ostensibly viewed as political interference. Multiple DI companies reported that they were uncertain about the future of their contracts with the government, especially in light of the Gateway Services breakup, leaving them hesitant to reinvest in their plant or equipment.

TRADING ACROSS BORDERS AND CROSSCUTTING THEMES

The following three areas are cited at the outset of this report as problematic across Ghana's agricultural sector. Here is how they apply specifically to Trade Across Borders:

Ignorance:

Farmers tend to store their food crops in traditional structures unsuitable for modern trade, leading to inordinately high quality and quantity losses. Domestic agribusiness enterprises tend not to sufficiently explore or exploit market opportunities at medium to long distances.

Information:

Formal coordinating mechanisms for buyers and sellers of agricultural products do not exist beyond "market days."

There is very little timely availability of global and regional commodity prices.

Infrastructure:

Legal, regulatory, and institutional infrastructure for seed markets is completely deficient.

Core agriculture infrastructure needs are not in sufficient quantity or quality (warehouses, roads, cold storage, scanning equipment, etc.).

CEPS has no risk-management, valuation, or rules-of-origin units or staff dedicated to implementing such processes. Risk-management and valuation work is contracted out to the DI companies, who are knowledgeable about WTO provisions and international best practices. However, this service comes at considerable cost and may not be a long-term solution to what reflects a training and internal human resources issue.

A number of issues have been reported in the DI market, namely:

- Lack of clear import guidelines was reported from a wide range of sources in the trade community,

- Importers consistently seek out the DI company with the least resources in order to undervalue their goods.
- DI companies are reported to account for more than 40% of total import transaction time,¹²⁸ a shortage of scanning equipment, and poor coordination with CEPS were reported as possible contributing factors.
- CEPS is reported not to be respecting the risk-management process. Officers are taking containers for physical exam even when they are slated for x-ray scan by a DI company. According to one person, “customer orientation isn’t part of the vocabulary of the customs officials I know—it’s like they’re doing you a favor to do their jobs.”

Revenue targeting. A heavy reliance on Customs collections and meeting national revenue targets has caused some in the Ghanaian customs community to worry that this pressure is counter to the long-term goals of CEPS. Revenue targeting pressures, as noted in the Paying Taxes chapter, were reported to include the use of high-level government officials visiting Customs outposts to encourage collection to “further development needs” by generating revenue for the government. This has the potential to cause arbitrary measures in order to raise collections, including increasing the number of unwarranted inspections and seizures, penalties, or the misclassification of goods to achieve higher duty rates. These practices would run counter to international trends toward risk-based profiling and minimizing regulatory burden to improve efficiency.

Customs integrity and professionalism. Border corruption is widely reported as an issue within Ghana’s trade community. As a response, an “anti-fraud” sensitization campaign is under way within CEPS. Interviewees reported that “it’s common knowledge” that bribes are paid to Customs officials. The perceived “opacity” of import procedures in particular creates the opportunity for officials to request informal payments. Interviewees noted the incentives for Customs to take advantage of complex procedures to demand unofficial payments. Some firms refuse to pay and suffer the consequences of delays, excessive document checks, and physical examinations of their cargo. Other factors given as contributing to the widespread corruption were low salaries and poor training of Customs officials, importers ignorant of shipping rules, and a general culture of trading in “drink money.” As yet, there is no national anti-corruption policy and interviewees were

unable to name current political figures who they believed to be champions of anti-corruption efforts.

Counterfeit goods. Officers reported that there is little to no training in detection of counterfeit goods. A number of interviewees and several recent press reports have mentioned counterfeit fertilizer as abundant. Several sources noted that these fertilizers were often of poor quality and of chemical composition different from that described on the label.

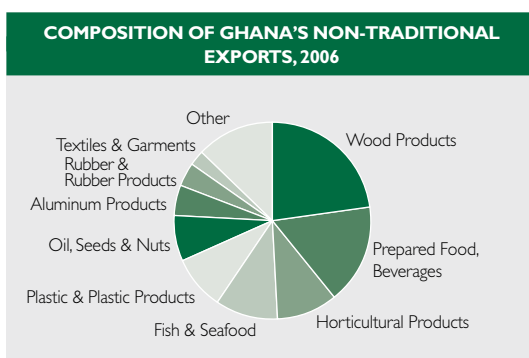
Single window. Other border agencies with responsibility for the health and safety of the public and for other responsibilities such as trade statistics, environment, and endangered species must be receptive and able to operate seamlessly with Customs. Ghanaian officials led the creation of a joint venture “single window” public-private partnership called **GCNet**. Joint venture partners include S.G.S (private), CEPS, Ecobank Ghana (private), Ghana Commercial Bank (government controlled), and the Ghana Shippers Council. GCNet operates as a for-profit company with cash flow generated from a network charge levied on all customs declarations.

In line with general trade reforms in the 1990s, Ghanaian authorities sought to attract more FDI by improving upon existing frontline ministries. As one interviewee suggested, “What good are low tariffs if our customs agency is dysfunctional?” The government’s ambitions of improving frontline agencies have a strong efficiency focus including customs, immigration, and the port authorities, among others. This formed the heart of the Gateway Project, partially funded via the World Bank. Efficiency enhancements and an improved sense of customer service were seen as drivers of competitive advantage via regional competitors such as Nigeria and Cote d’Ivoire.

GCNet was created to improve not only the efficiency of Customs and its sister agencies responsible for processing trade in Ghana, but also the revenue collection for the country. Prior to GCNet, paperwork submitted for importing and exporting was highly redundant and error prone. Traders were required to move from one agency to the next, with implementing agencies unable or unwilling to communicate—which created substantial opportunities for facilitation payments and unnecessary delays. The majority of agencies involved in import/export trade are now connected to GCNet. Much remains to be done, however, to fully engage this innovative PPP:

¹²⁸ Michael Luguje, *Evaluation of Port Efficiency and Fees* (USAID TIPCEE Project, 2008).

- Trade-facilitation chains are only as strong as their weakest (or slowest) links: Despite 100% of manifests being submitted electronically, SPS-related certificates from MoFA are still completed in paper form.
- MoFA is still not connected. Despite being an important partner in the trade-facilitation community, the ministry is not up-to-date because of alleged “budgetary reasons;” and other observers claim the ministry’s “interest isn’t to reduce clearance times.”
- The Statistical Service is connected to GCNet but neither uses nor actively manages the important import/export data that is generated as a result.



Provision of public information. Data on trade in agricultural (and other) goods is hard to find in Ghana. GCNet partners including CEPS, MoTI, and others each collect export and import data but fail to make this information readily available to the public. According to interviewees and in line with this author's own experience collecting data in Ghana, when data is released it is rarely timely and often incomplete. Multiple requests to CEPS, MoTI, GCNet, the Export Promotion Council, the BOG, and the Statistical Services resulted in incomplete and often out-of-date trade data. The IMF, ITC, and FAO all use error-prone trade partner “mirror” data in their own databases on Ghanaian trade, reflecting the challenge in getting proper data from official government sources.

OTHER GOVERNMENT AGENCIES.

Although Customs is the main implementing institution for the movement of goods, an efficient trading system relies on an interdependent process that includes other trade-related public sector institutions, trade service providers, and the traders themselves—importers and exporters. Their capacities, honesty, and performance can result in significant costs (or savings) within the

trading system. Optimized trade facilitation depends on the supporting institutions' active involvement in the process. A Customs administration that is not supported by a compliant, automated, and sophisticated private sector will not achieve a high degree of facilitation. Like CEPS, the trade-related public agencies also need adequate funding, sound management, well-trained staff, modern equipment, modern facilitative procedures, and active dialog with the trade and their stakeholders to respond timely and predictably to issues while guarding the public safety and security of the country. The private sector trade community also adds their expertise and familiarity with legal and logistical knowledge to the import/export process and is crucial to the efficiency and overall compliance of international trade movements.

TESTING AND CERTIFICATION SERVICES.

Sanitary and phytosanitary measures are the responsibility of the Ministry of Food and Agriculture's Plant Protection and Regulatory Services (PPRS) and the Veterinary Services Department. PPRS is also the WTO inquiry point for SPS issues. There are four major functional areas within the PPRS:

- Plant quarantine
- Pesticides management
- Seed inspection and certification division
- Plant disease and pest management

Certification of seed and fertilizer is the domain of the PPRS under the MoFA. MoFA licenses the import and distribution of fertilizer; on the basis of an administrative degree as there is no fertilizer law in Ghana. There is a draft law, which will likely be submitted by November 2008. Once it has passed, responsibility for its implementation will rest with PPRS.

Public and private institutions provide a full range of testing and certification services to ensure the safety of exported agricultural products. SGS of Switzerland and the PPRS both provide SPS-related services. Maximum residue level (MRL) testing is performed by the Ghana Standards Board (GSB) on an “on-request” basis. MRL compliance is the combined responsibility of Food and Drug, GSB, and PPRS. GSB laboratories have the capacity to test for microbiological contaminants. An example of their duties is the inspection of outbound fish to the EU. The GSB has been chosen as the competent authority for marine inspections. Ghana's Environmental Protection Agency (EPA), under the Pesticide Control and Management Act, is vested with responsibility for registering pesticides and licensing supply

companies. These include importers, distributors, and commercial applicators. PPRS has delegated its pesticide management responsibilities to the EPA for post-registration surveillance, including truth in labeling and imposition of sanctions.

Market access to export markets including the United States requires a pest risk assessment (PRA). PPRS is in the process of building the capacity to conduct PRAs in order for Ghana to gain access to key export markets. The result of the PRA will likely end up with the country needing to change its export and import rules in order to protect the country's agriculture and give foreign markets the confidence that products from Ghana will be pest free. Currently, there is an advisor from the U.S. Department of Agriculture (USDA-APHIS) advising the government on the pest risk analyses. The advisor reviewed and edited PPRS' analyses before they are submitted to APHIS for review.¹²⁹

Key constraints noted by "customers" of PPRS, GSB, and EPA or by government officials include:

- **Job-specific training:** Relevant staff training is essentially on the job.
- **Plant and equipment:** Border posts rely on handheld magnifying glasses to identify threats that cannot always be visually identified.
- **Sharing of information and ICT:** Surveillance of areas where disease exists or where it is disease free is hard if not impossible to find. Timely dissemination of such information needs to be a priority. PPRS has no website or easily accessible means of accessing or sharing information.
- **Trust:** Agricultural commodities do not move freely within ECOWAS, despite TLS, due to issues of trust, language barriers, and lack of legal and regulatory equivalence.

The private sector's main role in food safety is in the certification of compliance with third-party standards (organic, HACCP, ISO, GlobalGAP, etc.). As a whole there is capacity, albeit narrowly held, within the country to effect certifications, inspections, and testing required by destination countries for the country's agricultural exports including for the issuance of ISO, Global GAP, and British Retail Corporation (BRC) certifications.

There are 43 plant quarantine offices located at ports, airports, and border crossings across the country. The plant quarantine division enforces SPS regulations in conjunction with CEPS and other law enforcement agencies to ensure compliance by traders, travelers, shipping agencies, and port authorities. There are 150 plant quarantine inspectors,

all of them graduates of agricultural colleges (implying a minimum of 15 years of formal education). PPRS has delegated its pesticide management responsibilities to the EPA for post-registration surveillance, including truth in labeling and imposition of sanctions.

GOVERNMENT RESEARCH INSTITUTIONS.

There are three agencies introducing new seed into Ghana, The Grains and Legumes Development Board (GLDB), the Savanna Research Institute (SARI), and the Crop Research Institute (CRI). Each institution is required to produce 30% of their own revenue for operating costs. Neither SARI nor CRI generates more than 3% of their own operating revenue. The resulting shortfall was reported to result in low staff morale, a hemorrhaging of the most senior staff, and a lack of funds for research efforts.

THE COURTS.

Interviewees suggested that the commercial and fast-track high courts efficiently and effectively resolve disputes related to trade matters. Interviewees knowledgeable about the adjudication of trade-related cases noted that the courts have improved substantially in recent years and that they were generally pleased with the amount of time it took to get a case through court. Jurisdiction of administrative tribunals specifically charged with resolving trade-related disputes is clear; based on the value of the trade dispute at hand. While corruption is said to be an issue in the courts, most interviewees noted that they still believed they could get a fair trial in a reasonable amount of time. Decisions are issued in writing and include the grounds for the decision.

SUPPORTING INSTITUTIONS

INDUSTRY ASSOCIATIONS.

The Ghanaian private sector is active and an important part of promoting a fair and efficient regulatory environment for trade in agricultural products. The Ghanaian Confederation of Industries, the Poultry Farmers Association of Ghana, Federation of Associations of Ghanaian Exporters, Sea-Freight Pineapple Exporters of Ghana, the Ghana Agriculture Products and Traders Organization, and other like-minded organizations play a productive and essential role in public-private dialogue. While the chamber system is reportedly weak in Ghana, the institutions listed above, along with others, are known to voice the concerns of their members in order to effect change relevant to their businesses.

¹²⁹ See <http://www.usaid.gov/missions/westafrika/newsletter/archive/1qtr05/focus/index.htm>.

“There are numerous actors within Ghana that provide some sort of trade-related information. There seems to be consensus that too little market information exists and the information that does exist is not timely or well targeted.”

MAIN EXPORT DESTINATIONS AND IMPORT ORIGINS (2007)

Destination	%	Origin	%
1. European Union	34.2	1. European Union	36.3
2. South Africa	25.8	2. Nigeria	9.6
3. Burkina Faso	12.6	3. China	9.5
4. Switzerland	6.8	4. United States	6.6
5. United States	2.9	5. India	3.9

Source: WTO

Interviewees did note, however, that too few private sector institutions provide their memberships or the public with useful education programs. Rather they reportedly provide value by acting as “amplifiers.” To date, trade and industry associations are reported to have few obvious links to international trade organizations in the pursuit of harmonizing international standards or attaining and sharing expertise in their field of interest.

FREIGHT FORWARDERS AND CUSTOMS BROKERS.

Freight forwarders receive a lot of bad press in Ghana. The industry requires that they get licensed by CEPS to perform their functions of negotiating the complexities and (difficult) logistics of Ghana. The freight forwarder test is said to be relatively easy and the ethics screening incomplete. The **Ghana Institute of Freight Forwarders** carries out frequent educational programs and has resident as well as electronic course options for students. Numerous government officials referred to the freight forwarding community as “dishonest” and “poorly informed.” Traders requiring their services, however, noted that freight forwarders are essential to getting the job done in the shortest time possible.

TRADE INFORMATION.

There are numerous actors within Ghana that provide some sort of trade-related information. There seems to be consensus that too little market information exists and the information that does exist is not timely or well targeted. TradeNet is a private venture that acts as a platform for buying and selling agricultural products over cell phones and the Internet. The company has developed a system that uses the power of mobile networks to facilitate the flow of market information. Individuals can register their mobile phones to receive buy and sell alerts. These can be targeted by commodity, region, or other criterion. Interviewees noted that the technology was still new, that illiteracy rates are particularly high in rural areas and that cell phones and

computers were still relatively scarce to be calling the program a complete success. **The Ghana Export Trade Information Centre (GETIC), Ghana Export Promotion Council (GEPC)**, Ministry of Trade and Industry, and Ghana Statistical Service each provide some level of price or market information. In addition, private-sector actors including the Association of Ghanaian Industries (AGI) and Federation of Associations of Ghanaian Exporters (FAGE) each provide market information to their members.

SUPPLY CHAIN EFFICIENCY.

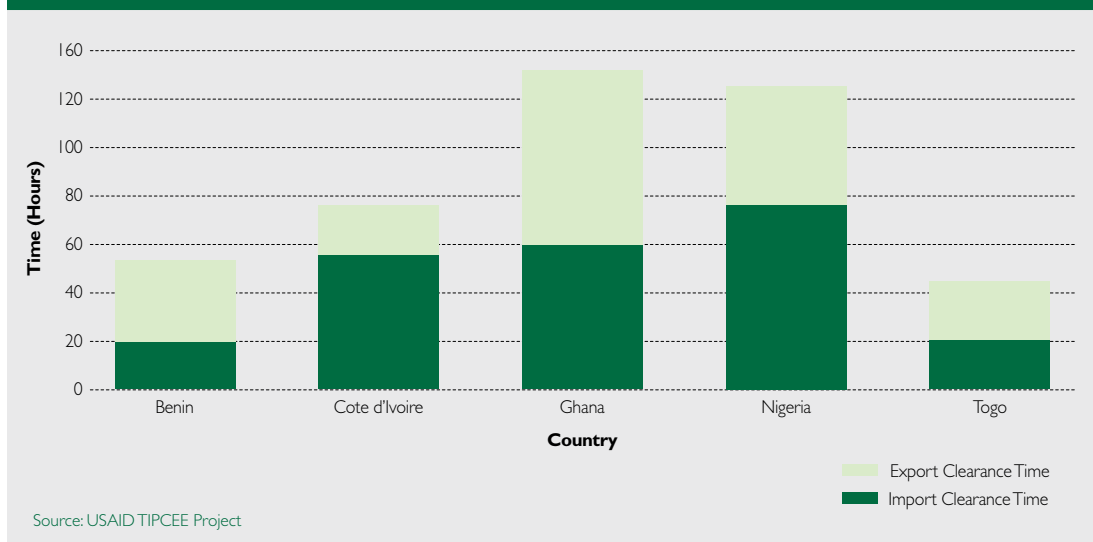
Value chains for agricultural and horticultural products must be efficient to compete in highly competitive regional and global markets. To be competitive in these markets, value chains should display the following characteristics:

- Market actors need to understand different options of moving product across different channels of distribution.
- Value chains need to be able to accommodate the normal flow of daily product and occasional surges in product availability.
- Product losses due to lack of sales outlets should not be significant.

KEY SUPPORTING INSTITUTIONS

- The Ghana Export Trade Information Centre (GETIC)
- Ghana Institute of Freight Forwarders
- Ghana Export Promotion Council (GEPC)
- The Ghanaian Confederation of Industries (GCI)
- Association of Ghanaian Industries (AGI)
- Poultry Farmers Association of Ghana,
- Federation of Associations of Ghanaian Exporters (FAGE)
- Ghana Food Distribution Corporation (GFDC)
- Sea-Freight Pineapple Exporters of Ghana, the Ghana (SPEG)

COMPARISON OF EXPORT AND IMPORT TRANSACTION TIMES



According to sources in Ghana and outside, Ghanaian agribusinesses tend to exhibit a lack of understanding of their different options for moving products across various distribution channels. Historical trade patterns remain dominant with the largest percentage of trade coming from and going to the EU. Only one ECOWAS country is considered to be in the top five export destinations for Ghanaian products.

There are a number of crucial impediments to the ability of markets to accommodate the normal daily flow of product in Ghana. First, inventories are kept small because of the lack of appropriate warehousing (cold storage or otherwise). Cereal producers and processors reported that there is a monopoly on 50kg bags, with frequent shortages in supply, constraining their ability to bring product to market. Second, a lack of short-term financing in the country left interviewees consistently complaining about their own inability to increase inventories in line with demand. Third, coordinating supply chains is difficult based on extensive road delays, delays at the ports, and delays in Customs. Moreover, poor coordination of supply chains resulted in what some sources called “unnecessary gluts”—that is, there are cases when imported grain has arrived too late to help resolve specific shortages that they were intended to help and tend to produce exactly the opposite effect that was intended with the initial shipment. Instead, because of a lack of warehouse options, these supplies tend to drive down the product price on the open market. Third, market information is inadequate across almost all agricultural value chains in Ghana. Traders and potential buyers of agricultural

products reported that price information is hard to find, incomplete, and rarely timely enough to affect buying decisions. The literature on agriculture in Ghana and interviews with agribusiness people suggests that most information about market opportunities is informal and comes through existing networks—a situation that is unlikely to incentivize market expansion or market-based innovation pressure.

Not being fully able to accommodate surges in product is widespread among agribusinesses in Ghana. Breweries demanding more sorghum for their operations are unable to source it. Animal feed processors have a hard time dealing with spikes in demand due to limited storage capacities on premises.

Last, reports of losing product based on insufficient or unidentified markets are frequent. Mangos fall to the ground to rot. But its not just “wild” products that fail to make it to market. Finding viable outlets for surplus food crops is also a major issue for farmers. The **Ghana Food Distribution Corporation (GFDC)** was set up specifically to provide market outlets for farmers, alongside private traders. It is reported to have handled only a small amount of the surplus on the market at any given time. There is a clear need for more timely information on where surpluses exist and in what quantities in order for GFDC and other actors to find the product they need and in sufficient quantities. The implications of poor ICT infrastructure on the agricultural sector are particularly significant when viewed in this light.

A common story heard across agribusiness subsectors in Ghana describes how producers are not able to find markets for their products and how processors and large-scale traders cannot find sufficient product to meet their demand. Frequently, this is the result of fragmented, uncoordinated distribution channels. According to interviewees, background research, and casual observation, competition is fierce within agricultural value chains. Market “queens” (i.e., the market leaders in localized commodity associations) reportedly fix market prices through collusion, control the quantity of product flowing into the market, and bar unaffiliated individuals from selling in their “territory.” Because of a lack of storage and the general absence of information about distant markets, this ability to control local markets is profoundly important. Understanding and partnering with market queens is essential to improving the opportunities and prices received by other market actors.

AGRICULTURE STANDARDS.

Ghana's agriculture exports are not uniformly compliant with GlobalGAP standards. There is considerable variation in production quality, and this hampers trade and trade finance. More consistent export quality would attract both foreign trade and investors. Exercising regulatory oversight, the Ghana Standards Board has to approve ISO certifications. GSB itself is approved to issue ISO certifications to fish processors, having received EU certification in 1998 and again in 2005. Some of these processors are 9,000 and 14,000 ISO certified. GSB is not approved to do ISO certifications for most agricultural goods. Ghana Standards Boards is the lead certifier for export standards. Bizarrely, the Food and Drug Board administers separate certification for sales in the domestic market, which division of responsibility has put some domestic processors in the odd position of being able to export food to Europe but unable to sell the same product within Ghana.

Quality assurance. The lack of quality assurance systems and procedures cuts across multiple agriculturally related value chains in Ghana. At the farm level, commodities such as maize or peanuts are sorted and cleaned, but only minimally. Evidence of debris in packaged and unpackaged product is apparent throughout the country. Crushed, cracked goods are commonplace. Product is bagged without labels and delivered to storage facilities that are frequently described as “inadequate.” Traceability back to growers

is not possible. Export of peanuts exemplify the degree to which the relevant authorities fail to maintain control of supply chains for export: while the GSB has certified only 4 companies for export, there have been at least 20 separate Ghanaian companies notified within the EU as supplying peanuts of insufficient quality to enter the market. Exporters of peanuts have not implemented Hazard Analysis and Critical Control Point (HAACP) standards or good agricultural practices (GAP). Good manufacturing practices (GMP) are not adequately implemented.¹³⁰

GHANA FOOD SELF SUFFICIENCY RATIOS	
Food Item	% Self Sufficient
Maize	96%
Rice	33%
Cassava	199%
Yam	369%
Plantain	131%
Cocoyam	117%
Livestock	30%
Fisheries	58%

Source: SRID and MoFA

PORTS.

Ghana's seaports are considered high-cost facilities because of their “limited physical capacity, high tariff rates and congestion.”¹³¹ Ghana has two main ports, Tema, 30km from Accra, and Takoradi, in the west, 230km from Accra. The port of Tema is the larger and newer of the two seaports. The port has 12 available berths beside 2 dedicated berths, 1 dedicated oil berth and the other operated by the Volta Aluminium Company (Valco). Tema handles 80% of the nation's import and export cargo. Tema Port operates under the authority of the Ghana Ports and Harbor Authority. Competition among vessel operators at Tema is intense. Refrigerated vessels enjoy a priority access to berths, giving them greater access than is enjoyed by the liner container carriers. Storage at both Tema and Takoradi is limited. Ghana ranks lowest in terms of time to clear exports and second lowest in terms of time to clear imports. Clearly, there is much room for improvement. Importers and exporters familiar with the ports noted that reasons for delay include congestion, timely process of paying “facilitation” payments, poor coordination of MoFA and GCNet, repeated handling of cargo, insufficient numbers of cargo lifts, insufficient number of scanners, and dispersed staging areas.

¹³⁰ European Commission, Final report of a mission carried out in Ghana from 11 to 20 September, 2007 in order to assess the official control systems in place to control aflatoxin contamination in peanuts and peanut products intended for export to the European Union. http://ec.europa.eu/food/fvo/ir_search_en.cfm

¹³¹ IFC, *Ghana International Competitiveness: Opportunities and Challenges Facing Non-Traditional Exports* (2001).

FERTILIZER AND CROP PROTECTION.

The market for fertilizer and crop protection products is extremely limited in Ghana. For instance, according to one government official, out of 15 million farmers, less than 50% use any fertilizer at all. And of the total population of fertilizer users, less than 50% of them apply the prescribed amounts. Stories abound of fertilizer mixed for cotton being applied to tomatoes and other crops, actually lowering their productivity. There is only one licensed importer of fertilizer: FBOs are not involved in input supply. Only private sector agrochemical companies provide and/or distribute seed, fertilizer, and crop protection products.

Interviewees noted that fertilizer use is low because of price. The small farmer is unable to purchase fertilizer, or if she does, she buys it in quantities insufficient to dramatically increase productivity. Recent news reports suggest that imports of counterfeit fertilizer (and other crop protection products) are on the rise—leaving poor producers to choose between low quality but more affordable product and unaffordable but higher quality product. The government's recently released subsidy program is based on a 40% subsidy level.

SOCIAL DYNAMICS

Ghana's brand as the most stable, peaceful part of West Africa is priceless. Combined with sound policies, the potential for increased trade and investment in the near term is easy to envision. Creating an environment that lives up to the lofty goals of the government and donors will continue to be a challenge, however. The importance of trade should be clear: the main driver of poverty reduction during the 1990s in Ghana was increasing international trade.¹³² The task of meeting the needs of Ghanaian agribusiness to is at least threefold: (1) increase the availability of food locally, (2) grow the country's capacity to earn foreign exchange, and (3) produce sufficient surplus to contribute to a strong non-farm economy in support of the farm economy.

There is substantial demand for reform in the Ghanaian agribusiness sector. Near Kumasi, the manager of a feed-processing factory bemoaned the time it takes to get his imported machinery into the country. Despite the implied cost, he was willing to forego duties paid on items meant to be duty free in order to expedite the arrival of key machinery. In Tamale, the operator of a pack house noted that 60% of operating costs went to paying for electricity. The government has promised to extend the grid for the last three years but still has not followed through on its promises.

The growing supply of reforms is evident, but lagging. The attempted coup d'état in the Ivory Coast in September 2002 and that country's continuing crisis have led many traders to look for other ports in West Africa. The Tema port witnessed rapid expansion with diverted traders looking for a safer port of entry and exit. This helped bring the competitiveness of Ghana's traderelated infrastructure into clearer focus.

Ghanaian firms have grown despite the country's mediocre trade-related infrastructure. Hard infrastructure issues including electricity crises, poorly maintained roads, and insufficient port equipment (e.g., scanners, lifters), and soft infrastructure issues including outdated or absent legal foundations, underfunded research programs, and market information all hamper the expansion of trade in agricultural products. Exporters and importers complained of various problems in getting their goods to market relating to poor infrastructure. Players in the maize trade, for instance, complain about:

- High transport costs
- High percentage of roads impassible during the rainy season and transport only available on certain days
- Lack of proper storage facilities increasing post-harvest loss rates
- Majority of storage facilities are meant for cereals, particularly maize.

POLITICAL LEADERSHIP.

It will take political leadership and a strong sense of prioritization to meet the challenges of staying competitive in a cutthroat global economy. The administration of President Kufour and both of the leading presidential candidates have championed the importance of focusing on the agricultural sector in Ghana as a path to economic growth. Under the government of President Kufour, Ghana has not adequately delivered on the promises of prioritizing agriculture. Of the \$2.2 billion public budget (excluding balance of payment and budget support) in 2006, 4 % or \$899 million was slated for "Private Sector Competitiveness," which includes infrastructure, modernized agriculture, and private and financial sector reform. Only half of this pillar's allocated funds were actually released and there were no explanation as to why the shortfall was necessary when donor funds exceeded allocated amount needed.¹³³ The government participates in the Comprehensive Africa Agricultural Development Programme (CAADP), which provides a well thought out framework to support agricultural growth, food security and urban development. It will

¹³² Clemens Breisinger et al., *Agriculture for Development in Ghana, New Opportunities and Challenges* (IFPRI Discussion Paper 00784, August 2008).

¹³³ Denise Wolter, *Ghana: Agriculture is becoming a business* (OECD, 2008).

take discipline to follow the CAADP principle of prioritizing agricultural-related investments in order to see a full take off in the agricultural sector. With favorable agriculture prices across most value chains, the time for reform truly is now.

THE ROAD AHEAD.

During the 1990s, Ghana made substantial strides developing its non-traditional export sector. Yams, rice, pineapple, cashews, and processed cocoa in the form of cocoa butter have each contributed to the diversification of the country's export economy away from the traditional cocoa, gold, and timber exports. This growth should not be taken for granted, however. In 2007, horticultural products recorded a negative growth rate of -6.37 compared with a year earlier because of the sector's inability to keep up with dynamic international markets. Changing market demands abroad will continue to challenge the Ghanaian agribusiness sector.

Opportunities abound for Ghanaian agribusinesses. Firms would do well by looking internally first: Ghana does not meet half of its own food needs for rice, livestock, or fisheries. But Ghanaian products such as rice, maize, and horticultural products are struggling to keep the attention of consumers in Ghana and in the region. Ghanaian consumer preferences tend toward imported rather than local rice based on perceptions of quality. Not only are Ghanaian markets within reach, but market analysts see that regional and international opportunities abound—in both food and non-food agricultural products. Nigeria, for instance, by far the largest rice market in the region actually prefers the par-boiled style of rice produced in Ghana. Private sector leaders in Ghana are unequivocal: Ghanaian agribusinesses and the *supporting government infrastructure* need to focus more on cost, quality, and marketing in order to take advantage of such opportunities.

RECOMMENDATIONS

- Recalibrate focus of recent development programs to increase attention to food crops, especially those that make up a large percentage of domestic consumption. Analyses of the Ghanaian economy suggest that increased food security and food affordability from strong growth in the food crop sector would have a major economywide impact that has been given short shrift to date.
- Revisit benefits, costs, and the process of becoming a signatory to the International Sale of

Goods Convention. Becoming a signatory would provide a strong framework for increased international trade in goods.

- Clarify the status of the ECOWAS trade liberalization scheme (TLS) and further integrate the private sector in ongoing deliberations.
- Review the extensive documentation required for imports and exports, focusing in particular on the Ministry of Food and Agriculture. International benchmarks including Singapore and Denmark should be considered. Particular focus should be paid to documentation and procedures required for perishable products. Despite efforts to create a single window using GCNet, significant duplication of permits, licenses, and procedures still exists.
- Review policy on mandatory permits for imports/exports in light of similar regimes with less regulatory burden for the private sector, including trade licensing.
- Revise duty drawback system. CEPS should consider alternatives including holding the funds in short-term interest-bearing treasury bills, in order to guarantee the availability of and prompt payment of refunded import duties.
- Consider alternatives to the current system of vesting complete signatory authority of the certificate of origin (COO) to the Assistant Commissioner of CEPS.
- Form a technical committee to consider the drafting of legislation on contingency measures. The government should help the private sector to better understand when dumping is and is not illegal under the current world trading system.
- Fast-track legislative drafting, review, and consideration for key agricultural bills including the Seed Law, Fertilizer Law, Food and Drug Law, and Biosafety Bill.
- Develop a public-private forum to consider issues around biosafety in Ghana, with a focus on genetically modified planting material.
- Prioritize the creation of a sustainable trade information system. Attention needs to be paid to (1) taking advantage of already existing information via GCNet, (2) providing market information cheaply and broadly, and (3) considering the formation of a public-private partnership to incorporate information from international market research firms on supply and demand trends.



ENFORCING CONTRACTS

Ghana exhibits considerably better conditions for the enforcement of contracts than most countries previously examined by BizCLIR.

ENFORCING CONTRACTS	
<i>Doing Business</i> Ranking 2009	50
<i>Doing Business</i> Ranking 2008	50
Procedures	36
Duration (days)	487
Cost (% of claim)	23

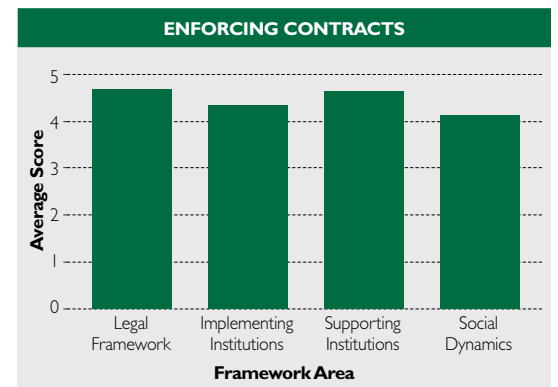
The following factors contribute to an increasingly positive environment for commercial dispute resolution in Ghana:

- The development of a new Commercial Court in recent years, as well as a number of “fast-track” high courts
- The emergence of alternative dispute resolution (ADR) mechanisms, including both arbitration and mediation
- A well-established community of valuation and accounting professionals
- A relatively well functioning system of bailiffs
- A growing sense that corruption in public institutions, including courts, has been exposed and will be less tolerated in the future.

Throughout this diagnostic, a relatively positive view of the courts, and indeed Ghana’s rule of law generally, unfolded. Lawyers, bankers, and business owners agreed that there is, for the most part, respect for the courts, and that resolution of cases—with the pronounced exception of land disputes—usually takes place in a reasonable amount of time. Ghana’s strengthening sense that commercial transactions will be governed by the rule of law cannot be underestimated as a critical factor toward reducing risk and as a comparative advantage for doing business in Ghana. In short, where lenders and investors believe that the contracts they make are enforceable in a fair and timely fashion, their sense of risk diminishes and their willingness to lend or invest concurrently increases. Moreover, when outsiders believe that their investments will not be decimated by official corruption, they are more likely to seek out Ghana’s opportunities and markets.

Nonetheless, with respect to Ghana’s agricultural sector, certain central concerns remain:

- Ghana’s judiciary appears to be highly oriented toward Accra, with little public information available about law, courts, and dispute resolution services outside of the capital city. Resources for commercial dispute resolution in particular do not appear to be directed at regions where the economy is significantly driven by agricultural enterprises.
- Ghana lacks formal mechanisms for quick enforcement of agricultural contracts, such as a workable secured transactions regime or expedited legal proceedings for enforcement of contracts involving perishable goods. Nor has arbitration been broached as a mechanism for quick, local resolution of disputes in the agricultural sector.
- Small farmers and FBOs remain unaccustomed to honoring, and even often unwilling to honor, written contracts for the purchase of agricultural products, thus increasing the risk of doing business in the sector.
- There is a perception among lenders that small borrowers will not be held accountable by courts for their flouting of contracts, thereby rendering lenders and other institutions unwilling to do business with them.
- Lawyers and bankers are not specifically trained in issues directly pertaining to agriculture, thus resulting in a contracting culture that is not conducive toward transactions in that sector.



In the category of Enforcing Contracts, the World Bank ranks Ghana 50th out of 181 countries surveyed in *Doing Business 2009*. This ranking is unchanged from the previous year, and Ghana fares quite well, in fact, relative to the rest of Africa. For the purposes of AgCLIR, although Enforcing Contracts is one of the country's stronger areas of review, continued commitment to strengthening courts and ADR, particularly beyond the larger cities, is necessary. There must also be a continued emphasis to smaller, less-educated constituencies about the importance of making and honoring contracts, along with a creative approach to improving perceptions of the value of contracts in the agricultural sector.

LEGAL FRAMEWORK

ACCESS TO LAW.

Access to the legal and regulatory framework within Ghana is relatively strong, but there is a great deal of room for improvement. Most of Ghana's laws, including its major commercial laws, are published in legal reporters that can be purchased for a fee by law firms or accessed at law libraries (such as libraries attached to Ghana's law faculties). Other influential sources of law, such as Ghana's Supreme Court decisions and case law from the United Kingdom, are available in hard copy to those legal professionals who know where to look. Several lawyers pointed out, however, that Supreme Court decisions are slow to be published and distributed.

A recent project by a private law firm has placed all of Ghana's laws, including most acts of Parliament, legislative instruments, constitutional instruments, and notices, decrees, and directives, in a word-searchable database, which is available from the firm for a fee. This resource is reportedly used with increasing frequency in the legal community (and has also been subject to considerable unauthorized duplication). There is also a growing body of secondary sources addressing the practice of Ghanaian law, such as a hornbook of Ghanaian tax law, published in 2006.

Nonetheless, there appears to be a need for greater guidance for lawyers about modern transactions and expectations of corporate practice. The timeliness of official government reporters, including Supreme Court decisions, is also an issue—the Ghanaian judiciary has yet to take advantage of technology resources well within its reach to get its case law out to the public through electronically published sources of authority.

The general availability of law in the capital and other more prosperous areas does not, unfortunately, reach many of the rural areas. Many lawyers working in rural areas do not possess copies of current decisions and laws, and the most recent sources of law, as mentioned, are typically not available in electronic form. Most of Ghana's high courts do have libraries that are accessible to members of the bar, according to the Ghana judiciary's official website.¹³⁴

KEY LAWS AND REGULATIONS

- Constitution (1992)
- Courts Act (1971)
- Major commercial laws of Ghana (as detailed throughout this report)
- Contracts Act (1960)
- Sale of Goods Act (1962)
- UN Convention on Contracts for the International Sale of Goods (Vienna Convention) (ratified in Ghana in 1980)
- Arbitration Act (1963)
- High Court (Civil Procedures) Rules (2004)
- Judiciary (Retentions of Revenues) Act (2003)
- **Draft** law on Alternative Dispute Resolution

Access to Ghanaian law from outside the country is generally insufficient. Several key commercial laws are not available through the World Bank's *Doing Business* law library. Not enough of Ghana's laws and regulations are available elsewhere on the Internet. Attempts at building timely and well-maintained websites that provide information about the environment for enforcing contracts, including that of the judiciary, have been successfully launched but, in short order, neglected or abandoned. It would be very easy for the government of Ghana to provide the World Bank with all of its commercial laws for posting, at a minimum. The Ghana Investment Promotion Centre should also post all the country's commercial laws in a single, easily accessible site.

THE CONSTITUTION AND THE COURTS.

Chapter 11 of Ghana's **Constitution of 1992** addresses the country's judicial system and reflects the makeup of the courts as first established in the **Courts Act of 1971**. Pursuant to the Constitution, there are two sets of courts in Ghana—lower courts, which involve smaller-value disputes and may be adjudicated by non-legally educated magistrates, and the “superior courts,” which include the Supreme Court, the Court of Appeal, and the high courts. The lower courts include

¹³⁴ Website of the Judicial Service of Ghana, available at <http://www.judicial.gov.gh/>.

WHAT IS THE JURISDICTION OF GHANA'S COMMERCIAL COURT?

Ghana's Commercial Court was set up to resolve cases involving a "commercial claim." Order 58 of the High Court Rules (2004) defines a commercial claim as follows:

A commercial claim is any claim arising out of trade and commerce and includes any claim relating to

- i. The formation or governance of a business or commercial organization
- ii. The winding up or bankruptcy of a Commercial or business or commercial organization or corporate person
- iii. The restructuring or payment of commercial debts by or to business or commercial organization or person
- iv. A business document or contract
- v. The export or import of goods
- vi. The carriage of goods by sea, air, land or pipeline
- vii. The exploration of oil and gas reserves
- viii. Insurance and reinsurance
- ix. Banking and financial services
- x. Business agency
- xi. Disputes involving Commercial Arbitration and other settlements awards
- xii. Intellectual property rights, including patents, copyrights, and trademarks
- xiii. Tax matters
- xiv. Commercial fraud
- xv. Application under the Companies Code
- xvi. Other claims of commercial nature.

around 130 district courts (around one per district, though some districts share courts) that handle cases valued at less than 10,000 cedi and a smaller number of circuit courts that handle cases of more than 10,000 cedi. Commercial disputes of even higher value are considered in first instance by the high courts. The number of high courts operating in Ghana is surprisingly difficult to determine with certainty and is not set forth on the official website of the Ghanaian judiciary.¹³⁵

Although Ghana's Constitution makes it clear that the judiciary is independent—beholden only to the Constitution and to no other "person or authority"—there is one provision that indicates a degree of politicization of the court system that sharply conflicts with the notion of judicial independence. Specifically, Article 128 the Constitution establishes a *minimum* number of members of the Supreme Court—10, including the Chief Justice—but *not* a maximum number. Thus, Ghana's president may appoint members of the Supreme Court as perceived political circumstances dictate. And he has done just that. At the time of this diagnostic, the Supreme Court had at least 16 justices, 4 of whom were appointed in June 2008. This fact uncomfortably belies constitutional assertions of judicial independence.

In 2003, the national legislature authorized the judiciary, through the **Judiciary (Retentions of Revenues) Act**, to keep 15% of the monies it collects. Assuming the money is tracked with a high degree of professionalism and integrity, this change allows the judiciary to identify and address some of its own resource needs, such as continued automation and greater service to litigants in areas beyond the capital city. Unfortunately, public information concerning implementation of this law is not immediately available.

THE HIGH COURT (CIVIL PROCEDURE) RULES.

Among the success stories continuously cited by stakeholders throughout the diagnostic process was that of the Accra-based high court that was formally designated as a Commercial Court in 2004 and opened for business in March 2005. With extensive technical support from the World Bank and automation tools supplied in significant part by the Danish international aid agency (DANIDA), a six-judge court is now available to resolve higher-value commercial cases. No new law was needed to establish this court—rather, the creation of the **High Court (Civil Procedure) Rules** enabled an existing court to become devoted entirely

¹³⁵ *Id.*

to commercial cases. Even before the establishment of the Commercial Court was the creation of a number of “fast-track” high courts, which through automation have also led to a much more efficient system of dispute resolution.

There is only one Commercial Court at this time, although there appears to be planning in the judiciary to open at least two more. There are several more fast-track courts operating in Ghana, with plans for automating more in the future.

THE FORMATION AND LAW OF CONTRACTS.

Ghana’s legal system is based on British common law. The most important exception for the purpose of commercial activity is the acquisition of interest in land, which is governed by both statutory and customary law.¹³⁶ The **Contracts Act of 1960** and **Sale of Goods Act of 1962** are adequate for the needs of the profession, according to a number of lawyers (although Ghana is not a signatory to the International Convention on Sale of Goods). These laws afford the conventional treatment to contracts generally and to sales of goods specifically that is found in most of the world’s free-market economies. What Ghana lacks, however, is a secured transactions regime that would allow for the quick and effective enforcement of contracts involving extension of credit.

Sale of Goods. Ghana’s Sale of Goods Act embraces all manner of goods, including agricultural goods.¹³⁷ Although the law is expressed very generally and applies to goods bought and sold in all sectors of the economy, certain of its provisions, including those pertaining to price, risk, and warranty, are especially important with respect to contracting for agricultural products.

First, the Sale of Goods Act obliges courts to enforce the “express terms” of contracts, thereby underscoring the advisability of contracting parties to detail all terms of a contract in writing. The statute allows for contracts to identify a fixed price for the sale or a price to be “determined during the course of dealing between the parties” (Section 6(1)). This provision is significant in that it allows contractors for agricultural goods to identify a “market price” as the price that will be paid upon a certain date or event. Of course, it is very important for contracting parties to spell out in the contract how market price is to be determined.

The Sale of Goods Act provides relatively clear provisions for risk of loss (including risks that arise in the import and export of goods), and these provisions have been illuminated by way of case law over the years.¹³⁸ In general, risk of loss or diminished worth of the goods is transferred between the seller and buyer at the time anticipated by the contract. Goods are generally deemed to be at the seller’s risk until property rights in the good pass from the seller to the buyer. If the delivery of the goods is delayed through the fault of either the buyer or the seller, the goods are at the risk of the party in default with respect to any loss, damage, or deterioration that might not have occurred but for the delay.¹³⁹ Despite the clarity of these terms, risk remains a significant issue in agricultural contracts, particularly when such issues as domestic transport and infrastructure present such a high probability that goods will be delivered late or in damaged condition. Ghanaian law includes a number of implied warranties. These include the seller’s implied warranty that he or she has the right to sell the property at the time that it passes to the buyer; the seller’s implied warranty that the goods supplied by the seller will correspond to the description of the goods in the contract; and an implied warranty that the goods sold are free from defect at the time of sale, unless defects are known and accepted in word or action by the buyer.¹⁴⁰ These are all important provisions in agricultural transactions, given the perishable nature of many agricultural products. It is vital that farmers are aware of the warranties that they are presumed to undertake when contracting for the sale of their goods.

Under the Sale of Goods Act, buyers have the right to reject goods that do not conform to the terms of a contract. Buyers also have the right to damages for non-delivery, damages for the breach of a condition or warranty, specific performance (i.e., the right to pay the negotiate price, and no more), and recovery of any deposits for performance that were paid, after which delivery did not occur.¹⁴¹ Again, these are terms that sellers, including individual farmers and FBOs, must be aware of, in order to avoid conflict at the time of the anticipated performance.

An unpaid seller also has important rights under the Sale of Goods Act. A seller has the right to hold on to his or her goods until payment is received, unless the terms of the contract dictate otherwise. A seller may keep a lien—that is, the right to repossess—on the

¹³⁶ See this report’s chapter on Registering Property.

¹³⁷ Dennis Campbell, *Remedies for International Sellers of Goods (Ghana)*, Vol. 2 (2006), at 48.

¹³⁸ *Id.* at 52–53.

¹³⁹ *Id.* (citing Sale of Goods Act, Section 27).

¹⁴⁰ *Id.* at 54–55.

¹⁴¹ *Id.* at 57.

goods sold on credit if the term of the credit has expired or the buyer has become insolvent. An unpaid seller who remains in possession of the goods may sell those goods to another party so long as the buyer has failed to pay in a reasonable time; the contract has been repudiated by the buyer; the seller accepts the repudiation; and the seller has given notice to the buyer of his or her intention to sell the goods.¹⁴²

The Sale of Goods Act has been in effect in Ghana for two generations, and lawyers are comfortable using it. Nonetheless, it is critical that lawyers are mindful of all the specific terms and conditions that agricultural contracts should include, particularly those involving risk, warranties, and perishable items. Such information can be taught in law school, as well as in continuing education classes for lawyers. Form books for agricultural contracts, to the extent that they are not widely available, should also be developed.

Secured Transactions. In addition to contracts for sales of goods, actors in a vibrant agricultural arena routinely encounter contracts pertaining to credit. As discussed in this report's chapter on Getting Credit, the absence of a law specific to secured transactions deters quick, inexpensive, and simple creation of a proprietary security right. There is no law that specifically addresses secured transactions, either traditional or non-traditional. The key banking laws are silent on both "secured transactions" and on "collateral" more generally. Lenders are in the position of setting their own ground rules on their use of secured transactions, from the information that they require to the types of transaction they will lend against, encompassing:

- Ascertaining the legal or natural status of an entity that is being granted or taking a security interest in a property
- Creation of multiple kinds of relationships regarding secured interests, including direct personal guarantees, third-party guarantees, bank guarantees, etc.
- Acceptance of property interests that allow at-risk collateral owners legal protection and insurance for collateral subject to acts-of-God events
- Non-possessory pledges in a variety of tangible and intangible property interests, including pledges of after-acquired property, values expressed in foreign currency, inventory, equipment, warehouse receipts, future harvests, and other types of assets.

Ghanaian law tacitly recognizes that ownership or title is not necessary for a borrower to seek creation of a secured interest. Without a specific law, lenders set their own policies on what they will accept as collateral and the documentation that they need for its perfection. Lenders must determine for themselves if they will or will not accept "lawful possession" as sufficient for the creation of a security interest. Moreover, there are no specific legal remedies for breach of a secured transaction contract or clear measures for calculating monetary damages if possession of the secured property is not reasonably possible. There are no means for registering a security interest on an asset, whether through collateral registry, by public notice, or with a third party. Some lenders, such as S&Ls or smaller banks, secure transactions by taking title or other claim to collateral, though without depriving the person receiving a loan of the use of his or her assets.

Clearly, the availability of contracts for credit in the agricultural sector would be greatly enhanced if banks and other lenders had a more substantial legal basis on which to secure their loans.

ALTERNATIVE DISPUTE RESOLUTION.

Resolution of commercial disputes through arbitration and mediation is permitted by Ghanaian law. **Ghana's Arbitration Act** entered into force in 1963, but around 25 years passed before arbitration was accessed in a meaningful fashion as a mechanism for resolving commercial disputes. To date, arbitration has been used particularly with respect to resolving disputes involving foreigners. The **GIPC, Free Zones, Labour, and Minerals and Mining Laws** each outline dispute settlement procedures and provide for arbitration or mediation when disputes cannot be settled by other means. They also provide for referral of disputes to arbitration in accordance with the rules of procedure of the United Nations Commission on International Trade Law (UNCITRAL), or within the framework of a bilateral agreement between Ghana and the investor's country. The **High Court Rules** specifically provide for mediation and other types of ADR as a required pre-trial procedure in the Ghanaian high courts. There also is reportedly a Draft Law on Alternative Dispute Resolution that further embraces mediation as an integral part of a successful dispute resolution system, but the status of that draft is unclear.

“Clearly, the availability of contracts for credit in the agricultural sector would be greatly enhanced if banks and other lenders had a more substantial legal basis on which to secure their loans.”

¹⁴² Id. at 60.

IMPLEMENTING INSTITUTIONS

THE COMMERCIAL COURT.

There are many advantages to the using Ghana's Commercial Court, as cited by lawyers, bankers, government representatives, and others.

KEY IMPLEMENTING INSTITUTIONS

- The Commercial Court
- The high courts and fast-track courts
- Other trial courts
- Ghana Arbitration Council
- Bailiffs

First, the rules of the court require that all cases undergo efforts at ADR prior to trial. This requirement has been implemented in conjunction with significant training for judges and other legal professionals in mediation. The commitment to ADR among judges and lawyers appears to be strong. Lawyers interviewed throughout the country express general satisfaction with pre-trial mediation.

Second, individuals who have participated in court proceedings have high regard for the judges who currently sit on the court. The judges are viewed as bringing ample commercial experience to their positions and are not perceived as being biased for or against certain players in the economy. Although some bank representatives allege that there is an anti-bank bias on the part of some judges in Ghana's court system, that allegation does not appear to apply to members of the Commercial Court.

Third, the pace at which cases are resolved through the Commercial Court is generally satisfactory to litigants, although some lawyers suggest that, due to the popularity of the court, the pace has slowed. One interesting feature of not only the Commercial Court, but also all other courts in Ghana, is the fact that trials do not take place on a continuous basis. This is a state of legal practice that is worth visiting and, perhaps, changing: Why *shouldn't* all parties to a case be ready to proceed on the same day, under the same conditions? Concerns about case resolution taking too long could be significantly addressed if there were a greater commitment to timely execution of cases through single, continuous trials.

One major disadvantage of the Commercial Court is that, as of September 2008, there is only one such court, with just six judges, located in Accra. Thus, Ghana's regions that are oriented toward agriculture as the basis of their economies are at a disadvantage and are not as well served as other sectors that tend to have a stronger presence in the capital. There are plans to transform high courts elsewhere in Ghana into two or three more Commercial Courts, but there is not a shared understanding, particularly in those areas, of the plans or time line for doing so.

THE HIGH COURTS—FAST-TRACK COURTS.

As previously noted, Ghana established "fast-track" courts earlier this decade to expedite action on some cases. The fast-track courts, which are automated divisions of the high courts, were intended to try cases to conclusion within six months. Among lawyers interviewed for this diagnostic, the fast-track courts received generally positive reviews. The use of automation is viewed as a positive development and lawyers feel that the fast-track high courts resolve cases in a more professional, accountable fashion than they did just a few years ago. However, there is a sense that the fast-track courts are not keeping up with their caseloads—"the fast-track courts are beginning to slow down," according to one lawyer in Kumasi.

Bankers appear less enthusiastic about the courts than the lawyers, complaining that the lawyers themselves "take too long" and "abuse the system" and that judges "are not commercially minded—they know the law but do not understand the commercial implications of the law."

Significantly, despite the automation capabilities of the fast-track courts, court records and disposal times are not available online. It is even difficult to access information about the number of high courts, including fast-track courts, operating in Ghana. Reportedly there are approximately 30 high courts operating in the Greater Accra region, and only about 8 high courts operating in the Ashanti region, which in fact has a comparable, if not greater, population. It appears that *all* of the fast-track courts operate in Accra.

At this time, there are plans for special **land courts** to be developed to manage the greatest roadblock in Ghana's system of dispute resolution. Success will depend not merely on the capacity of the courts, but also on the quality of the law under which they operate.

OTHER TRIAL COURTS.

Overall, Ghana’s system of courts is busy and underresourced, but generally functioning. As summarized by a banker in Kumasi who has experience in enforcing loan contracts, “the courts are good, but they could be better.”

Ghana’s lower courts enjoy a relatively strong reputation for addressing cases quickly, with 4–10 weeks being a normal time for district and circuit courts to dispose of small-claims cases, with the exception of land cases. The non-family court civil caseload of Ghana’s lower courts is about 40% landlord-tenant cases; 30% recovery of debt; and 10% possession of land, according to one lower court judge in Accra. Ghana maintains a system of magistrates, whereby persons without a law degree can resolve cases in district court, so long as they receive training from the Ghana School of Law.

An August 2007 report cosponsored by the Ghanaian Integrity Initiative (GII) (a local division of Transparency International) and the German government concluded that there remains “a significant level of corruption in the judiciary.”¹⁴³ The GII report examined the courts in Accra-Tema and Kumasi and found routine corrupt practices in the litigation of land and commercial cases. These practices included offering and acceptance of money or gifts by judges or other improper attempts at influence, such as through pressure through friendships or family ties.¹⁴⁴ It also included money, gifts, and other improper influences on court staff being used to impact the function of the courts.¹⁴⁵ Problems faced by lawyers included demands from clients that they attempt to improperly contact judges or court staff during the course of litigation; an epidemic of missing files, resulting, apparently, from bribes to court staff to “lose” them; and even a problem of lawyers being approached by members of the judicial service who were seeking money in exchange for favors.¹⁴⁶ “There is a lot of corruption going on,” one experienced lawyer in Kumasi confirmed during this diagnostic. Confidence in courts for that reason, he said, is “not high.”

The perception of corruption is gradually changing for the better; it appears. According to a long-time practitioner in the real estate sector, corruption among judges and other government officials has diminished significantly in recent years. Following the issuance of the GII report, the Chief Justice of Ghana’s Supreme Court announced steps to combat corruption in the judiciary, including more forthright discussion and direction on the issue, written pamphlets directed to court staff pertaining to integrity in the courts, and posting of anti-corruption notices.¹⁴⁷

One year later, there is an increasing sense that corruption can be publicly “outed” and that the judiciary is forthrightly discouraging its membership from all conflicts or the perception of conflict. Moreover the perceptions of corruption generally in Ghana are indeed far less negative than those found in neighboring countries. The very fact that the GII study was permitted to take place can itself be taken as a sign that places Ghana in a very positive light. There are many societies where freedom of thought and expression are far less tolerated and where such exposure of corruption on the part of state agencies would not be permitted to be studied or exposed. Unlike many other nations on the African continent, Ghana has been rated by Freedom House as “free”—that is, it has a generally sound record of allowing freedom in the media and in political activity.¹⁴⁸

CORRUPTION IN THE NEIGHBORHOOD: HOW GHANA FARES RELATIVE TO ITS NEIGHBORS IN THE CORRUPTION PERCEPTION INDEX 180 COUNTRIES SURVEYED		
Country	World Ranking	Score
Benin	96	3.1
Burkina Faso	80	3.5
Cote d'Ivoire	151	2.0
Ghana	67	3.9
Nigeria	121	2.7
Togo	121	2.7

Source: Transparency International, *Corruption Perception Index* (2008). Scored on a scale of 1 to 10, with 10 being best (perceived as the least corrupt).

GHANA ARBITRATION COUNCIL.

In 1996, the privately managed Ghana Arbitration Center (GAC) was established as an alternative to Ghana’s congested courts and as a fast, high-quality destination for resolution of commercial disputes. In 2004, through the support of Danida, the GAC opened a new building in Accra that serves as a center for arbitration activity. The GAC has developed an approved list of arbitrators and also has provided training to prospective arbitrators in recent years.

Although the GAC has handled a number of disputes since its inception, it has not experienced the growth in caseload that might have been expected just a few years ago. The rate of cases being referred to the GAC for resolution is less than five per year. The fact that the Commercial Court requires pre-trial ADR has not led to greater use of its services; in fact, it is more likely that cases are being resolved through mediation at the court.

143 Ghana Integrity Initiative/GTZ, *Report on Judicial Corruption Monitoring Exercise in Ghana (Accra-Tema and Kumasi)* (August 2007).

144 *Id.* at 18.

145 *Id.* at 22–25.

146 *Id.* at 25–27.

147 Ghana Government website, *Judicial Council to Check Corruption in the System* (September 2007), available at http://www.ghana.gov.gh/ghana/judicial_c_ouncil_check_corruption_system.jsp.

148 Freedom House, *Freedom in the World* (January 2008). Freedom House’s two other classifications, based on political rights and civil liberties, are “partially free” and “not free.” Of the countries ranked by the World Bank as the world’s top 25 economies for doing business, Freedom House classifies 18 of them as “free.” Six of the top 25 are classified as “partly free” (Singapore, Bahrain, Georgia, Hong Kong, Thailand, and Malaysia), and one (Saudi Arabia) is categorized as “not free.”

With respect to resolving disputes between contracting parties in the agricultural sector, arbitration does not yet appear to have been adequately explored. Yet it presents a meaningful opportunity for fast resolution of cases involving, among other circumstances, perishable goods. For arbitration to become useful in the sector, it would need to take hold beyond Accra. It would also need to be carefully integrated into overall capacity development for FBOs (see this report's chapter on Protecting Investors). Ghana has the expertise and even the resources to realize expanded use of arbitration in the agricultural sector. What it lacks at this time is the inclination to move toward that approach.

BAILIFFS.

Ghana has two sets of bailiffs—those who are employed by the state and who are authorized to execute court judgments, including the seizure of assets; and those who operate privately and handle other functions related to the work of courts, such as service of process. It remains nearly impossible for property secured against a loan to be repossessed by a lender without court approval and without court-sanctioned bailiffs. Borrowers can contractually agree to seizure without a court order; but, according to banks, will go directly to court if such action is taken. One reason that banks resist lending money to agricultural concerns is that they do not feel borrowers understand or appreciate the importance of repaying loans and the consequences of failing to do so.

SUPPORTING INSTITUTIONS

THE JUDICIAL COUNCIL.

As established by the Constitution, the Judicial Council in Ghana is comprised of the following representatives:

- The Chief Justice (Chair)
- The Attorney-General
- A justice of the Supreme Court nominated by the justices of the Supreme Court
- A justice of the Court of Appeal nominated by the justices of the Court of Appeal
- A justice of the high court nominated by the justices of the high court
- Two representatives of the Ghana Bar Association, one of whom shall be a person of not less than 12 years' standing as a lawyer
- A representative of the Chairmen of Regional Tribunals nominated by the chairmen

- A representative of the lower courts or tribunals
- The Judge Advocate-General of the Ghana Armed Forces
- The head of the Legal Directorate of the Police Service
- The editor of the Ghana Law Reports
- A representative of the Judicial Service Staff Association nominated by the association
- A chief nominated by the National House of Chiefs
- Four other persons who are not lawyers appointed by the president.

The functions of the Judicial Council include the following:

- To propose for the consideration of government, judicial reforms to improve the level of administration of justice and efficiency in the judiciary
- To be a forum for consideration and discussion of matters relating to the discharge of the functions of the judiciary and thereby assist the chief justice in the performance of his duties with a view to ensuring efficiency and effective realization of justice
- To perform any other functions conferred on it by or under the Constitution or any other law not inconsistent with the Constitution.

KEY SUPPORTING INSTITUTIONS

- The Judicial Council
- The legal profession
- Law faculties
- Ghana School of Law
- Ghana Bar Association
- Judicial Training Institute
- Association of Magistrates and Judges
- ADR institutions and professionals
- Valuation professionals and auctioneers
- Notaries

The Judicial Council has a well-established reputation for seriousness and commitment to the rule of law, as exhibited by its willingness to “take on” the issue of corruption in the courts. Unfortunately, the Judicial Council's “gateway” to information—that is, its website—is not especially well executed or maintained. The list of courts it provides appears to be those located in Accra only, and an attempt to provide a “weekly cause list” is usually out-of-date. As with many other state institutions in Ghana, establishment of a website has not been sufficiently accompanied by due attention to

website content and maintenance. Thus, an opportunity to assist persons working in the rural areas, who may increasingly depend on Internet access to government services, is not being sufficiently exploited. (As of mid-October 2008, the judiciary's website has been removed from the Internet, with a notice that the site is "undergoing changes.")

THE LEGAL PROFESSION.

The Ghana Bar Association estimates that there are about 2,500 practicing lawyers in the country.¹⁴⁹ "The figure cannot be more accurately stated," according to the GBA, "because not all lawyers take the trouble to register with the [GBA] and although the records of the Judicial Secretary ought to give an accurate figure, those records only indicate the number of persons who have been enrolled since 1876 when the Supreme Court Ordinance was passed, without giving any indication as to how many have died so that one does not have an accurate figure of how many lawyers are actually in practice."¹⁵⁰

As in many countries, lawyers in Ghana range in quality and in access to resources. Although most commercial lawyers are familiar with general contracts practice, few, if any, Ghanaian lawyers specialize in contracts issues specifically pertaining to the agricultural sector. Indeed, it is a prevalent complaint that lawyers in Ghana do not have sector-specific knowledge that would strengthen their ability to draft appropriate contracts, engage in sector-specific dispute resolution, and enforce contracts in a context appropriate to agriculture.

Written contracts are common in Ghana, including in the agricultural sector. Again, as is the case in most countries, the quality of written contracts is uneven. Some economic actors prepare contracts without lawyers and "some lawyers are better than others."

LAW FACULTIES.

There are two primary faculties of law in Ghana, the University of Ghana and KNUST, in Kumasi. Although these schools until recently allowed students to study law as a first degree, they now are graduate institutions, for which a first degree in nearly any other field is a prerequisite for admission. The faculties at the law schools are generally well respected, and take advantage of many opportunities, such as graduate degrees earned abroad and bringing in lecturers from other systems. There is reported crowding of classes and issues concerning the ethics of both students and

professors, which bears continued scrutiny and vigilance as part of the long-term effort in Ghana to increase respect for the rule of law.

Significantly, the curriculum of the law schools does not reflect the extent to which Ghana's economy depends on agriculture. Only land law, environmental law, and international trade courses have direct application to the agricultural sector; and no courses are offered that may directly apply to specific legal issues that arise in agriculture. Contract law is a core course for Ghanaian law students, although there is no specific course in Ghana's two law faculties delegated to special issues in agricultural contracts. The law schools also do not yet provide classes in ADR to the extent that would be useful to the agricultural community. This is an area where KNUST, which is especially close through its various academic programs to a large community of agricultural buyers and sellers, could take the lead.

GHANA SCHOOL OF LAW.

In order to be admitted to practice law, all law school graduates are required to undertake a two-year professional law course at the Ghana Law School, after which they become eligible for a Barrister-at-Law certificate. To obtain this certificate, a student must satisfactorily complete a course in customary law. To be enrolled as a lawyer, an individual has to demonstrate to the General Legal Council that he or she is of good moral character.

GHANA BAR ASSOCIATION.

The Ghana Bar Association (GBA) is the sole professional association for lawyers in Ghana. Although not the creature of statute, it is recognized by the Constitution as a key player in many aspects of Ghanaian society. For instance, the Constitution requires representatives of the Ghana Bar Association to serve on the Judicial Council (Article 153), the Police Service Council (Article 201), the Prison Service Council (Article 206), and the Land Commission (Article 259), among others. The GBA holds an annual conference during which lawyers of the country consider and debate policy issues affecting Ghana and vote on policy statements of the organization.

JUDICIAL TRAINING INSTITUTE (JTI).

Ghana's institution dedicated to training and continuing education for judges was established around the same time as the Commercial Court and the fast-track high courts. The JTI has received significant financial assistance from the Canadian National Judicial Council.

¹⁴⁹ See website of the Ghana Bar Association, available at <http://ghanabar.org/gba/au-lawyers.html>.

¹⁵⁰ Id.

The JTI is responsible for the training of the following: (1) judges and magistrates; (2) registrars; (3) financial administrators; (4) court administrators; (5) court clerks; (6) interpreters; and (7) bailiffs. JTI programs include orientation training sessions for new judges and magistrates, professional development programs focusing on emerging issues and social contexts, and career training for court and administrative personnel. Participants in JTI training course report general satisfaction with the quality of the programs.

ASSOCIATION OF MAGISTRATES AND JUDGES.

This organization is a registered association that has the following mission on behalf of the country's magistrates and judges:

- a) Promoting their interests and welfare.
- b) Promoting conferences and meeting of members.
- c) Promoting uniformity of practice and the best methods of preventing crime and of treating offenders with a view to their reform.
- d) Keeping abreast with developments in the law and the administration of justice in general as they may affect the word of members.
- e) Educating members to understand the true nature of their duties so that they shall have the judicial mind and act judicially whilst on the bench.
- f) Assisting members to obtain sufficient knowledge of the law so as to perform duties easily and creditably.
- g) Educating members to understand the relationship that should exist between members of the bench, the bar, registrars, and other officers and / or servants of the courts.
- h) Encouraging members to pay visits to institutions like the prisons and remand homes (both locally and abroad).¹⁵¹

The Association of Magistrates and Judges is described as “not relevant” by one judge, who finds better rapport and substantive guidance in other institutions such as the Ghana Bar Association. Nonetheless, it is important that judges have an organization to represent their key concerns, including that of work conditions and salary.

ADR INSTITUTIONS AND PROFESSIONALS.

There is a high level of expertise in ADR in Ghana, with mediation becoming particularly popular as a skill to be taught and learned. There are private companies involved in training and providing mediators, as well as a professional association called the Ghana Association of

Mediators and Arbitrators, which regards its mission as the “popularization” of ADR. Ghana's legal community, with support from the donor community, is enthusiastically embracing ADR, and the knowledge and skills available to resolve cases in this fashion is high. A particularly innovative approach to integrating ADR into dispute resolution in the rural areas is training tribal chiefs in mediation and other dispute resolution skills. Such interventions should be tracked for overall effectiveness and lessons learned.

There is not yet a consensus about public receptiveness to ADR as a means of resolving disputes. One Accra-based lawyer asserted that “Ghana is not a litigious society...we have much more informal methods of resolving disputes.” Yet a lawyer in Tamale indicated that, when it comes to formal dispute resolution, “People do not feel satisfied with ADR—they want the court [to decide their cases].”

In fact, arbitration and mediation represent fast, inexpensive alternatives to the traditional court mechanisms in the agricultural sector. Particularly in light of the lack of special provisions for perishable items, ADR would be especially useful in the sector:

VALUATION PROFESSIONALS AND AUCTIONEERS.

Ghana is fortunate to have a relatively strong corps of professionals who have the expertise to provide valuation and auctioning services that are in line with international best practices. Valuation professionals are both employed by the state through an office in the Architectural and Engineering Service and work privately. The availability of valuation and auctioning services means that a culture of enforcing contracts is much stronger in Ghana than in those countries where such services do not exist or where confidence in such services is low. Lawyers express overall satisfaction with the pace of execution of judgments, although bankers complain that the process takes too long. Auctioneers are reportedly permitted to sell moveable property within 7 days of an enforcement judgment being rendered by a court and real property within 21 days of judgment.

NOTARIES.

In step with the common law tradition, notaries are used on Ghana for certifying the authenticity of certain documents. They also certify as to the “truth” of certain documents, which is a higher burden than found in many common law countries. Notarization is not,

¹⁵¹ See website of the Judicial Service, available at <http://www.judicial.gov.gh/association/home.htm>

however; a mandatory step in the creation of most contracts and thus does not present a significant obstruction to doing business.

There are fewer than 100 notaries in Ghana. They are lawyers appointed as notaries by the Judicial Council after having proven practice in the law for a minimum of 10 years and general good standing in the community. Notary services are not inexpensive—notarization of a single document can cost between 200 and 600 cedi.

SOCIAL DYNAMICS

THE PROBLEM OF AGRICULTURAL CONTRACTS.

Throughout this diagnostic, the issue of contracting in the agricultural sector was cited as a key problem. Primarily, there is little faith that smaller farmers in particular will honor their contracts, both as sellers of goods at previously negotiated prices and as borrowers of money from banks and other credit providers. Buyers of agricultural products are routinely frustrated by the practice of creating contracts for delivery of goods that are completely ignored at the time of sale (when the farmer finds a better price). Similarly, lenders have found that smaller farmers are not accustomed to having to pay back the money they are lent; that they treat many loans as grants, particularly those that come from the state; and that they often do not use loan money for the purpose for which it is dispersed, thus making it impossible to pay back money when it is owed.

Indeed, most farmers in Ghana are quite poor and in many cases poorly educated. The more this is the case, the greater the possibility that they will behave entirely opportunistically about price. That is, a farmer or FBO that grows corn, rice, palm oil, tomatoes, or other local products may agree with a corporate buyer at the beginning of the season to sell goods at a certain price. These farmers and FBOs may even accept seed, pesticide, other inputs, and expertise about best farming practices as part of the arrangement to sell to a certain buyer. But even the most carefully negotiated contract may be disregarded if another buyer arrives with a higher price than the contract price at the time of harvest. “Farmers do not respect contracts,” according to the operator of a shea nut export business.

Many buyers of agricultural goods have learned that they will be defeated by fixed-price contracts if farmers can get a higher price later. Thus, they have learned to build

some flexibility into purchasing contracts, allowing for higher prices when the market price rises. They also find that close monitoring of farmers and FBOs is a key part of getting them to honor their contracts. Buyers who help to support farm productivity and stay in touch throughout the growing season find that they have a better chance of actually purchasing the goods they have negotiated to buy. The “nucleus farm” model, discussed in this report’s chapter on Protecting Investors, is an increasingly trusted method of making this happen.

As for lenders, they too have found that careful monitoring and communications with farmers and FBOs are critical if they are to get them to honor their contracts. Larger banks report that, when it comes to agricultural lending, they prefer to direct their monies to smaller lending institutions that can assume responsibility for day-to-day interactions with borrowers, because they are not themselves in a position to take on that responsibility with respect to smaller borrowers.

RECONCILING CUSTOMARY SYSTEMS WITH THE COMMON LAW.

Ghana has, on the one hand, a relatively sophisticated legal environment with a long tradition based on the British common law. On the other hand, it has an even longer tradition of resolving disputes through tribe-based mechanisms or other customary methods. It is hard, according to one observer, “to marry the formal system with the informal... We are forcing people to become formalized without understanding what happens” when traditional systems are displaced without acknowledgement of the role they played in the system. That said, there appears to be a consensus that the customary systems—with their duplicative institutions and lack of transparency in certain regards—do not themselves contribute to a strong environment for doing business, particularly as compared to other emerging markets. (This view is not unanimous: “It is a myth,” according to one prominent attorney, “that our [land] law is hard to understand. We do not need Anglo-American land tenure.”)

The area in which the disputes are the gravest, and the impact on the economy the most significant, is indeed with respect to the dual systems of managing land, as discussed in this report’s chapter on Registering Property. “Not only does it cost money” to certify the true owner of land or land use rights, one discouraged home-builder reports, “but also huge amounts of time and aggravation.”

Although reaching a consensus on the best way to manage disputes over land could likely take another generation in Ghana—at least—one approach advocated by an agriculture economist is that of involving the private sector in the consensus-building process. The private sector has been increasingly engaged in policy development on land, and this is a welcome change, he said. Another suggestion, put forward by a number of stakeholders at the roundtable discussion held as part of this diagnostic, was to create a Parliamentary-endorsed commission that is charged with reconciling land and property ownership issues in Ghana. The consensus from that discussion is that only through “commitment at the top” will the critical issue of customary land ownership be addressed.

OVERALL RESPECT FOR THE RULE OF LAW.

In Ghana, notwithstanding its various noted shortcomings, the court system commands overall respect, significantly more so than that exhibited in many other countries examined by BizCLIR. When summoned, parties typically appear in court. The very threat of court action is known to make parties evaluate their behavior rather than shrug off their obligations. Lawyers credit recent improvements in the pace of litigation with strengthening the environment for enforcing contracts. “People take contracts more seriously now,” explained one lawyer; “now that [cases] are more expeditiously enforced.” Ghana’s ranking in *Doing Business 2009* as among the top one-third of countries for Enforcing Contracts is a competitive advantage for the country, one that should be nurtured even more in its rural sectors where agricultural disputes tend to arise.

RECOMMENDATIONS

- Through a model that provides for sustainability and continuous updating, create a single, online repository of commercial laws.
- Use the Internet and other media to significantly strengthen information and other resources

provided by the judiciary. The judiciary’s website should be immediately expanded to list the types and locations of all courts in Ghana, not those just in Accra. Information about plans for expanding the Commercial Court and the fast-track high courts should also be provided, in response to the lack of information and awareness currently exhibited in the field. Information about other measures, including the specifics of anti-corruption initiatives and the development of land courts should also be detailed. Rules of court should be provided, along with forms, directions to courts, information about libraries and access to laws, and other key information. Efforts to gather and communicate this information will reveal where there are unaddressed issues, thereby presenting a clear opportunity to address them.

- Move forward with plans to bring a Commercial Court and fast-track high courts to regions beyond Accra.
- Continue anti-corruption initiatives in the courts, including posting of court fees; public admonitions against seeking or paying bribes; prosecution of corrupt behavior; and teaching of ethics in all formal environments, including the law faculties, the Ghana School of Law, the Ghana Bar Association, and the JTI.
- Consider introduction of small-scale arbitration programs in rural areas, so that disputes over agricultural contracts can be quickly resolved and enforced. Train local business people in arbitration.
- In any program that supports FBOs, include a component that underscores the usefulness of contracts and obligations associated with entering into contracts.
- Promote continuing training among lawyers, bankers, business development professionals, and others about specific contracting issues relevant to the agricultural sector, with an emphasis on managing risk.



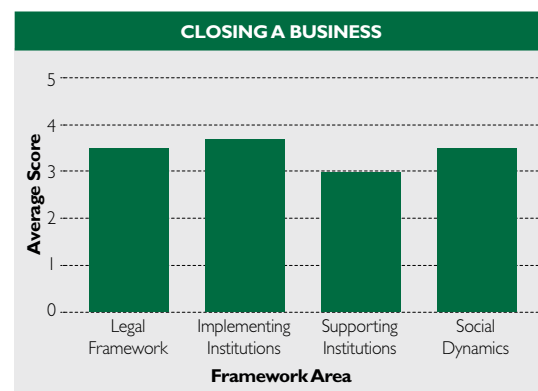
CLOSING A BUSINESS

When a borrower becomes insolvent and is unable to pay its debts as they become due, most legal systems provide a procedure that has, as one of its primary purposes, the expeditious and orderly liquidation of assets to pay the claims of creditors. Such systems are essential in countries with active economies in which credit is generally available. Without such systems, assets and the conflicting claims of creditors become embroiled in prolonged and inefficient legal proceedings, which produce relatively small distributions in terms of recoveries to creditors. Inefficient or nonexistent bankruptcy systems also prevent the redistribution of income-producing assets and employees, with an overall negative impact on the local communities in which previously solvent businesses once operated.

CLOSING A BUSINESS	
<i>Doing Business</i> Ranking 2009	104
<i>Doing Business</i> Ranking 2008	99
Time (years)	1.9
Cost (% of estate)	22
Recovery Rate (cents on the dollar)	24

In 2006, a new Insolvency Act replaced Ghana's previous law for insolvency, dating from 1962. Lawyers and bankers generally view the new law as an improvement over its predecessor, because it clarifies and streamlines the conditions under which companies that cannot pay their debts may enter into bankruptcy. It also introduces for the first time a meaningful approach to rehabilitation of insolvent firms. The Insolvency Act is not yet especially relevant or useful to the communities that need it most, however, including the growing arena of registered enterprises and their stakeholders. In particular, the statute generally disregards special concerns of constituencies that extend credit to agricultural producers and processors, such as specific needs arising from the perishable nature of agricultural products.

In its most recent report, *Doing Business* ranks Ghana 104th out of 181 countries surveyed for Closing a Business. The AgCLIR scores show certain positive trends in the area, but considerable room for improvement remains, particularly in the rural areas. As detailed in this chapter, reform requires concentrated implementation and education about the country's insolvency law.



LEGAL FRAMEWORK

Ghanaian law provides for two mechanisms for dealing with insolvent companies: the winding-up provisions under the Companies Code, and insolvency and reorganization procedures as provided for under the 2006 Insolvency Act. In practice, because both codes name the Registrar General to act as a liquidator or trustee, the choice of law tends to be that of the Registrar General.

COMPANIES CODE.

Two or three times a year—and sometimes *no* times in a year—a registered company in Ghana will undertake the winding-up procedure as dictated by Part U of the Companies Code. In theory, this procedure is available to companies that are solvent, but that do not wish to formally exist any longer. In practice, this procedure is engaged exclusively when companies are, for all intents and purposes, no longer

solvent. It may also be used by creditors who believe a debtor is no longer solvent and should be put out of business.

Pursuant to the Companies Code, an enterprise embarking on the winding-up procedure must pass a resolution for private liquidation and file that resolution with the Register General. (The RG also has the authority to appoint a liquidator if the company fails to respond to an inquiry about whether it is still in business.) The RG then files a notice in the Official Gazette of Ghana and appoints a liquidator for the company, usually a member of the staff of the RG's Office. Creditors of the company are given an opportunity to notify the liquidator of any outstanding company debts. The liquidator, who is regarded as having a fiduciary responsibility toward the company, takes the place of the directors and handles payment of debts and collection of outstanding revenue. In the event that the liquidator determines the company be insolvent, another notice is placed in the Gazette.

The Companies Code is conspicuously vague about the duties of a liquidator in weighing the various claims that may be submitted by creditors. There seems to be a presumption that formal insolvency procedures will be followed, but, in practice, that is usually not the case. In most instances, banks and other creditors in Ghana do their best to take from insolvent debtors what they can get on their own terms and without concern for the priorities of other creditors.

KEY LAWS

- The Companies Code (1962)
- The Insolvency Act (2006)

Regardless, once the RG finds that the formal liquidation of a company is complete, the company is stricken from the company register. The company is deemed to be dissolved at the date of the publication of a notification of the dissolution in the Gazette.

INSOLVENCY ACT.

Ghana's Insolvency Act, which replaced a generally unused liquidation law from 1962, improves the prior framework in that it increases the clarity of the system through which corporate insolvency can be addressed. It falls short, however, in emphasizing the desirability of reorganization of viable businesses and in providing for special needs of agricultural concerns.

With respect to certain "best practices" in the area of insolvency law,¹⁵² set forth below, the statute has various positive and negative attributes:

The laws should provide certainty in application and predictability of results in the context of a mature credit industry. That is, the laws should promote reorganization of viable businesses and the closure of nonviable ones with the speedy liquidation of assets for the benefit of secured and unsecured creditors. This provides certainty to the credit markets about the consequences of a borrower's default. Ghana's Insolvency Act provides far greater certainty and predictability of results than previously existed. By setting forth the roles and responsibilities of the debtor, creditors, trustee, and court, and imposing clear duties and responsibilities on each, there is an increased sense of the consequences of insolvency.

Nonetheless, a problem that persists in Ghana is the poor clarity of priorities among debts in the financial system. As discussed in this report's chapter on Getting Credit, the absence of a law specific to secured transactions deters quick, inexpensive, and simple creation of a proprietary security right. There is no law that specifically addresses secured transactions, either traditional or non-traditional. The key banking laws are silent on both "secured transactions" and on "collateral" more generally. Lenders are in the position of setting their own ground rules on their use of secured transactions, from the information that they require to the types of transaction they will lend against. Thus, although the Insolvency Act requires creditors to prove their respective claims on the property, they are often doing so from a position that is weaker than it needs to be.

To a greater extent than the previous law on insolvency, the new law seems to provide for reorganization of businesses, although the term "reorganization" is not used or defined. Rather, the statute allows for formal "arrangements with creditors" that may permit the company to reorganize and remain in business (Section 20). Greater clarity in this regard is warranted. Indeed, the Insolvency Act misses the chance to state the desirability as a policy matter of salvaging viable businesses rather than letting them succumb in all instances to the demands of creditors. It does not achieve the goal of suggesting to agricultural enterprises that they may attempt to reorganize before being forced into liquidation.

¹⁵² The best practices enunciated here are drawn from a prior BizCLIR analysis of the business environment in Afghanistan, available at <http://www.bizclir.com/cs/countries/asia/afghanistan>. They were drafted by Judge Michael Williamson, a United States Bankruptcy Judge from the Middle District of Florida.

The law should aim to maximize on the value of the borrower's assets. There is an inherent tension between the speedy liquidation of collateral to pay a secured creditor and the need to preserve asset value for the benefit of not only the secured creditor but other secured creditors and unsecured creditors. In a country so heavily dependent on agriculture, the Insolvency Act ought to, but does not, make special provisions for management of perishable goods in the event of insolvency. The statute does not mention accelerated procedures for asset recovery in the event of a business's closure. There are no clear provisions for immediate liquidation of perishable assets.

The law does, however, charge the trustee with "protection of assets," which may serve as the basis for immediate liquidation of perishable assets (Section 43).

The laws should provide equality among similar creditors. One of the purposes of a centralized bankruptcy proceeding is to prevent the race to the courthouse that would otherwise result if creditors were left to pursue the assets of the debtor independently. In this regard, the laws should address preferences and fraudulent conveyances made to benefit favored creditors or to shield assets from the reach of creditors generally. To a greater extent than that found in the past, the Insolvency Act provides for equality among similar creditors and, to a certain extent, prevents the "race to the courthouse." This is done through the clear statement of trustee duties, including the duty to consult creditors (Section 48). The Insolvency Act also speaks to fraudulent conveyances. For example, the law makes debts to close relatives a lesser priority than those to non-relatives (Section 47) and penalizes arrangements with creditors that are clearly meant to thwart the rights of other creditors (Section 20). As a policy matter, the Insolvency Act stands squarely in favor of treating all creditors fairly, rather than rewarding inside players who themselves may be at fault for the company's demise.

The law should provide a timely and efficient resolution and wind up of the debtor's affairs. Procedures should be simple with the rights and duties of the participants—the debtor, creditors, and the trustee—clearly delineated. Although the Insolvency Act increases the speed and predictability at which liquidation of a company may take place, it does not address special issues that may arise among cooperatives or FBOs. Particularly in an environment

where the legal status of FBOs can be so vague (see this report's chapter on Protecting Investors), this may be an issue that causes problems in the future. For example, what would happen if an FBO recipient of a large grant from the Export Promotion Investment Council became insolvent? The law is not clear about the rights and duties of the stakeholders under such circumstances.

The insolvency process needs to be conducted transparently to ensure complete access to information by all participants. The debtor's obligations to provide information about its financial affairs to the trustee and other interested parties needs to be clearly delineated, with participants able to obtain the debtor's compliance with those duties. As discussed in this report's chapter on Enforcing Contracts, Ghana has a relatively strong record—if far from a perfect one—concerning the transparency of its formal dispute resolution activities. Moreover, transparency in those institutions charged with implementing the Insolvency Act—the RG and the courts—is improving.

With respect to the debtor's obligations to provide information about its financial affairs to the trustee and all other interested parties, these obligations are fully set forth in the law. Nonetheless, weak business accounting practices, discussed elsewhere in this report, may interfere with generating a clear picture of a debtor's actual assets and liabilities.

Priorities of certain creditors need to be established. This is a matter of local policy and will be in large part culturally based. Ghana's Insolvency Act states the order of priority among creditors, with wages and taxes being of first priority (Section 48) and secured debts taking precedent over unsecured debt (Section 54).

IMPLEMENTING INSTITUTIONS

REGISTER GENERAL (RG).

The RG has traditionally served as the liquidator/official trustee for bankruptcies in Ghana. It does not maintain a separate office for this role, due to the fact that so few formal insolvency proceedings are launched in Ghana, whether under the Companies Code or the new Insolvency Act. Formal training on the Insolvency Act is likely not available to RG professionals on a regular basis. Nor are the special interests of agricultural enterprises discussed.

The RG's reputation for transparency and speed of service has improved dramatically over the past two years.

KEY IMPLEMENTING INSTITUTIONS

- Registrar General/Official Trustee
- Courts

COURTS.

Although Ghana has historically had few bankruptcy case filings, with the development of its commercial economy and the improvement of its commercial legal framework and institutions, commercial activity will increase to include the wider availability of commercial credit. This will inevitably lead to an increase in the number of businesses needing bankruptcy relief in the form of liquidation or reorganization.

The newly established Commercial Court has been used successfully by some banks and is said to be promising. Foreclosure on loans, once initiated, takes about 90 days, but the court requires that banks prove they have made every possible effort to work out the loan. This would likely be the underlying requirement in an insolvency proceeding. The Commercial Court requires alternative dispute resolution prior to trial. This fact may facilitate reorganization of companies to an extent not observed in the past.

The Commercial Court will undoubtedly develop expertise over time with the experience gained from presiding over bankruptcy cases. In the short term, however, because bankruptcy brings into play all of the debtor's commercial transactions and related issues, lack of capacity among judges in the handling of bankruptcy cases will be acute.

Thus, there is a need to develop and implement training for judges, including Commercial Court judges and other high court judges, for continuing education throughout their tenure. This training should cover the provisions of the Insolvency Act. Just as important, because bankruptcy is at the intersection of all laws that deal with the creditor-debtor relationship, this training should include other commercial topics such as contracts, secured transactions, mortgages, and personal property leases.

KEY SUPPORTING INSTITUTIONS

- Banks
- Judges and the legal profession, and other related professions
- Valuation professionals and auctioneers.

SUPPORTING INSTITUTIONS

BANKS.

As detailed in this report's chapter on Getting Credit, foreclosure on loans is far from automatic and usually consumes considerable resources, though there are widely varying approaches. At the one extreme, some lenders take title to an asset before loan disbursement, which allows them to circumvent the insolvency process and generally facilitates rapid foreclosure. For banks, which often have their reputations at stake, such an approach is difficult. The banks and most other lending institutions must collect on debts, including those held by insolvent companies, through the legal system.

Until recently, borrower default did not have consequences much wider than their relationship with their lender. Once Ghana's new credit bureau is fully operational, sometime in 2009, defaulters' information must be sent to the credit bureau, including records of insolvency.

In practice, when a company defaults on a loan, a lender will roll over or restructure the loan and will seize assets only if it must. According to some bankers, closing a borrower's business operations through formal liquidation procedures has been an effective means of getting repayment because of the stigma it poses for delinquent borrowers. One bank officer stated that although the bank has not gone through insolvency proceedings in the Commercial Court, "the Bank prosecutes defaulting borrowers all of the time."

In the event of default, the more aggressive of the S&Ls repossess and auction assets, which they can do swiftly since they already hold title. If the asset auction does not raise sufficient capital to repay the loan, the S&L may go after any guarantors as well (usually family members). By being highly aggressive at prosecuting default, the S&Ls essentially signal to prospective borrowers the risk that they take on by doing business with them. Some S&Ls train their borrowers in lending, application, and repayment procedures.

JUDGES AND THE LEGAL PROFESSION, AND OTHER RELATED PROFESSIONS.

Although the courts are the key implementing and most important institution with respect to an effective insolvency system, a working system also depends greatly on the presence of individuals and institutions that can support the practice. These institutions include

as insolvency attorneys, accountants specializing in the insolvency area, and workout consultants. They also include auctioneers, appraisers, and individuals willing and able to serve as insolvency administrators. Associations of bankruptcy professionals are also an important part of the fabric of a working insolvency practice. These institutions, such as bankruptcy bar associations, regularly meet to share ideas, cross-market services, and participate in educational programs.

Because of the absence of any significant bankruptcy practice in Ghana, these institutions have not developed. That is, no professionals or institutions with a primary specialty of bankruptcy exist in Ghana; even if they are burgeoning in Accra, they certainly do not exist to any meaningful degree in the rural areas. In addition, there are no associations of attorneys and other professionals dedicated to the promotion and enhancement of the insolvency profession. There are also no judges' organizations dealing specifically with insolvency. Training in law school on the topic appears to be minimal.

VALUATION PROFESSIONALS AND AUCTIONEERS.

Ghana is fortunate to have a relatively strong corps of professionals who have the expertise to provide valuation and auctioning services that are in line with international best practices. Valuation professionals are both employed by the state through an office in the Architectural and Engineering Service and work privately. The availability of valuation and auctioning

services means that formal liquidations can be fairly and promptly carried out. Lawyers express overall satisfaction with the pace of execution of judgments, although bankers complain that the process takes too long.

SOCIAL DYNAMICS

The social dynamics overall in Ghana are favorable for the development of an efficient insolvency system, although considerably more could be done to integrate the interests of the agricultural sector. There does not seem to be resistance to the notion of formal insolvency procedures, only ignorance. The most important driver of the process will be increased availability of credit, as detailed at length in this report's chapter on Getting Credit.

RECOMMENDATIONS

- Provide assistance to Ghana's legal training institutions to offer courses on insolvency.
- Create workshops for the banking community to familiarize bankers with the insolvency law and bankruptcy concepts generally, with an emphasis on banks' roles in reorganization.
- Design and implement an outreach program to the universities to assist in the training of professors in bankruptcy and insolvency concepts and laws with a view of developing curriculum designed to educate law students on bankruptcy and other commercial concepts.



APPENDIX:

COMPILATION OF RECOMMENDATIONS

STARTING A BUSINESS RECOMMENDATIONS

- Continue to pursue reforms in business registration requirements that will make the process simpler, faster, and less expensive.
- Through the business registration process, track the establishment of new businesses by sector; so that more is known about the characteristics of agriculture enterprises entering the formal sector.
- Develop a carefully crafted set of incentives and fiscal and regulatory waivers to encourage transition into the formal sector.
- Support public awareness campaigns on entrepreneurialism, business opportunities, and the benefits of joining the formal sector.
- Build awareness about public and private institutions available to help agriculture enterprises through radio programs, television programs, and billboards.
- Review the need for differential treatment of domestic and foreign-origin investments, particularly as it entails differing minimum capital requirements.
- Liberalize immigration procedures for middle-level and senior expatriate management, at least until such time as such skills become widely available in Ghana.
- Secure the ratification and enactment of the draft SPS legislation.
- Secure the ratification and enactment of the draft Seed Law. Develop a comprehensive plan for implementation, so that the practical effects of the new law can efficiently enter the marketplace and strengthen commerce in the agriculture arena.
- Strengthen the scope and reach of MoFA's Agricultural Extension and Engineering Services.
- Increase the extent of irrigation projects so as to bring Ghana into line with its agricultural competitors in the region.
- Ensure that the Irrigation Development Authority becomes an active proponent of the expansion of irrigation services across the entire country.
- Continue to invest in infrastructure improvements, especially in the areas of trunk and feeder roads that serve to move agricultural products from their sources to the markets of the country, the region, and the world.
- Continue to pursue reforms in the process by which agricultural land can be secured, registered, and held.
- Create policies and vehicles to support the extension of credit to the agricultural economy, including through the establishment of a secured transactions law and practice.
- Improve the provision of electricity services to agriculture and agroprocessing, and to the rural sector as a whole.
- Increase funding to agricultural research institutions; relieve them of the need to generate unreasonably high percentages of their operating budgets; and direct them to focus less on bureaucratic compliance with outdated seed legislation and more on contributing to the severe problems of low productivity and low incomes currently plaguing the production sector.

- Expand the utilization of Tradenet and other market information systems, including the start-up of a system similar to the USDA's Federal-State Market News Service, and develop improved means of organizing farmers and FBOs to process and respond to timely and reliable price and volume information in all markets where they operate.
- Promote longer planning horizons and greater coordination on donor programs in the agricultural sector.
- Reinforce the promising MiDA program of farmer and enterprise training in commercial agriculture, pursuant to facilitating the conversion from a subsistence mentality to that of a commercial undertaking.
- Review the nature of agricultural education to insure that it is adequate to provide farmers and agribusinesses with twenty-first-century tools for meeting twenty-first-century challenges.
- Review investment promotion activities to ensure that local and foreign investors are better attuned to the promise of agribusiness investments.

DEALING WITH LICENSES RECOMMENDATIONS

- Consider the impact on agricultural productivity of all license requirements in the agricultural and agribusiness sector. Where the impact on productivity is negative, consider modification or elimination of the requirements.
- Revisit all licensing regulations governing crop protection products to ensure that they are limited to legitimate scientific, technical, and environmental considerations only.
- Expedite approvals for all CPP whose formulations, under different trade names, have already been approved for use within Ghana.
- Secure the ratification and enactment of the draft Seed Law and the Plant Quarantine Law, as well as the regulations that will accompany their implementation, as important weapons in the attack against Ghana's agricultural productivity problems. Develop a comprehensive plan for implementation of the new laws, so that their practical effects can efficiently enter the marketplace and strengthen commerce in the agriculture arena.
- Take special care with the proposed Fertilizer Act to avoid unnecessary restrictions or encumbrances on the efficient importation and distribution of nutrient materials by the private sector.
- Relieve Ghana's agricultural research institutions of the burdensome and unremunerated tasks of field-testing every new seed variety prior to release.
- Consider exemptions for CRI and SARI from the 30 percent self-funding requirements, in order to free them both to move more vigorously in attacking Ghana's productivity problems.
- Develop capacity-building programs for GAIDA and SPAG in order to strengthen their ability to assume leadership in the private sector takeover of responsibilities in the seed production and inputs handling and distribution.
- Work with FBOs on methods to facilitate and accelerate the adoption of productivity enhancements into the agricultural value chain.

EMPLOYING WORKERS RECOMMENDATIONS

- Publish the universe of labor and employment-related laws and regulations in a single, accessible, and adequately maintained place.
- Revisit the 2003 labor law and remove all aspects that are unduly burdensome on the ability of employers to hire and fire employees at will.
- Review and, where necessary, reform system of immigration and work permits. Investors unable to find workers with the skills they require should be enabled to employ expatriate workers meeting their skill needs with minimal interference from the state. There should be no arbitrary limits on employing foreign employees.
- Examine the process to date of implementation of the 2003 labor law and identify opportunities for improved implementation, particularly as it concerns the rights of casual workers.
- Without recreating donor-supported work that has been done in the recent past, move forward with the creation of a workable law on cooperatives that supports the cooperative model as a sustainable means of local investment and agricultural jobs.

- Analyze and evaluate all donor and government support directed over the past five years to FBOs with an eye toward lessons learned and pitfalls to be avoided. Identify those interventions that were started and then abandoned, and determine whether they should be revisited or relaunched.
- Create linkages between more well-organized FBOs and Ghana's business schools, developing partnerships in marketing and business development services.
- Study, propose, and implement options for creating tax breaks or other incentives for companies that invest in worker training. There are many models for such a system throughout the world, including government training grants or subsidies, tax credits, and public-private training partnerships. These warrant further consideration from the perspective of what would work best in Morocco.
- Encourage professional and business associations to continuously provide information about and train their constituencies in the details of the labor law.
- Review law school and business school curricula to ensure that they are teaching not only general topics in labor law, but also the law as it pertains to the agricultural sector.
- Provide media training in the specific area of fair, thorough, and accurate coverage of labor and employment topics.
- Strengthen and expand opportunities for vocational education and training. Continue improvements to primary and secondary education systems, with particular emphasis on encouraging higher rates of primary-school completion and progress to secondary school. Examine how, particularly with respect to girls, issues of infrastructure and sanitation impact the decision to pursue secondary education.
- Seek greater understanding and documentation of sharecropping relationships, so that these informal relationships can be documented to the extent that the farm workers have clear and verifiable access to legal rights.

REGISTERING PROPERTY RECOMMENDATIONS

- Consider implementation of the diagnostic roundtable recommendation favoring establishment of a Parliament-supported high-level commission addressing the long-term future of land ownership in Ghana.
- Continue pursuit of the Lands Commission Act of 2008 objective of simplifying the registration process by institutionalizing a "one-stop shop" system.
- Strengthen the capacity within the GIPC to facilitate the accumulation of agricultural land on behalf of potential investors.
- Inject additional resources into the land registration program, so as to reduce the volume of land disputes with which courts must deal.
- Establish a special ADR vehicle dedicated to the resolution of disputes over customary lands, to further reduce the burden on the conventional court system.
- Recognizing that kings and paramount chiefs are essential allies in solving the land tenure crisis in Ghana, develop pathways to integrate kings and chiefs more closely into the formal land attribution process, by giving formal recognition and tax-free status to drink money, as well as other accommodations to remove the barriers to cooperation between constitutional and customary land authorities.
- In addition to customary land registration and attribution activities, assist customary land management agencies to develop promotional programs that accumulate land banks for specific uses and promote and market these lands to the domestic and foreign investment communities.
- Provide official sanction and support for donor projects such as the World Bank's Land Administration Project, and MiDA's private land market project.

GETTING CREDIT RECOMMENDATIONS

- Create a more precise legal basis for moveable, immoveable, and intangible agriculture assets as collateral, which would facilitate the establishment of title companies and asset registries.
- Extend the Home Mortgage Finance Law [PNDCL 329] 1993 to all types of mortgages, not just houses.

- Enact a law specific to secured transactions to provide quick, inexpensive, and simple creation of a proprietary security right. The key banking laws are silent on both “secured transactions” and, more generally, “collateral.” There is no law that specifically addresses secured transactions, either traditional or non-traditional.
- Improve lenders' access to information and documentation on titles and claims. There are some efforts said to be under way to improve this situation, but this seems to not be coordinated and lenders do not know the status of any such programs. An asset registry, which would enable lenders to establish the priority of claims on an asset, would be particularly helpful for both moveable and fixed collateral.
- Introduce “re-marking clauses” to encourage the use of reference prices more widely, so that a final contract price does not diverge too much from the market price and spur farmers to defect from their contracts. By improving the observance of contract terms, lenders will be more willing to provide value chain finance.
- Expand the credit bureau's remit to include collecting positive information on borrowers to provide all lenders with an indicator of their creditworthiness. As the situation now stands, lenders only have access to negative information and defaulters may be penalized, but high-quality borrowers do not benefit from the credit reporting system. This arrangement favors lenders that do not want other lenders to poach their clients, but it is not favorable to borrowers who might get a better deal elsewhere.
- Increase crop storage capacity. There seems to be a vicious catch-22 that prevents investment in new crop storage facilities. The interest rate is high and repayment is too distant to be of interest to banks; meanwhile it is difficult to finance trade in many crops because of the lack of storage. Somehow this cycle needs to be broken, preferably through financial or tax incentives.
- Strengthen MFI reporting requirements and improve GHAMFIN's capacity to collect information on lenders and borrowers, to allow GHAMFIN to fulfill its clearinghouse role. GHAMFIN should be able to monitor the percentage of total financing that microfinance represents, and how microfinance is disaggregated by sector, by productive activities, such as agriculture, mining, etc., and by urban/rural parameters.
- Establish a clearinghouse on financial vehicles, incentives, etc., that are available through donors and others, by region. A significant constraint is a general lack of knowledge within the private sector of the various types of assistance available to them. This lack of information and coordination has resulted in donor funds going untapped. Programs vary in their requirements and in their geographic availability. Much information should be more accessible than it is at present.
- Improve the knowledge base of lenders concerning agricultural lending. Most lenders have fairly rudimentary strategies, and they are uncertain how agriculture could fit profitably into these strategies. Loan officers are generally ignorant of how to assess an agribusiness (e.g., poultry layers) investment, and miss out on profitable opportunities.
- Educate agribusiness entrepreneurs on how to prepare business plans and develop and present financial projections so that they are readily understandable by loan officers.
- Formalize the sharecropping system so that such transactions are recorded. Until these transactions are documented there will be almost no way for the formal financial sector to reach them and the sharecroppers will remain “unbanked.”

PROTECTING INVESTORS RECOMMENDATIONS

- Through a model that provides for sustainability and continuous updating, create a single, online repository of commercial laws.
- Without recreating donor-supported work that has been done in the recent past, move forward with the creation of a workable law on cooperatives that supports the cooperative model as a sustainable means of local investment. Program support for FBOs—whether donor or government funded—should include widespread education of FBO participants on the content and the practical implications of this law.
- Analyze and evaluate all donor and government support directed over the past five years to FBOs with an eye toward lessons learned and pitfalls to be avoided. Identify those interventions that were started and then abandoned (such as websites or technical assistance initiatives) and determine whether they should be revisited or relaunched.
- Create linkages between more well organized FBOs and Ghana's business schools, developing partnerships in marketing and business development services.
- Update the Companies Code to reflect modern trends in corporate governance, with an emphasis on increasing transparency and serving the particular needs of smaller businesses and agribusiness.

- Within the Registrar General's Office, implement a means of tracking the number of agricultural enterprises established and publish this information on a regular basis.
- Review, update, and create an informational maintenance plan for all state-sponsored websites oriented toward investment, including those belonging to the GIPC, the Free Zones Board, MoFA, MiDA, EDIF, the courts, and others.
- Through a model that provides for sustainability and continuous updating, create a single, online source of information pertaining to venture capital.
- Conduct an in-depth study of Ghana's use of the free zone model as a means of supporting agricultural investment. Using lessons learned from other countries and experiences of local companies using the model, evaluate how strengthened government commitment to free zones can result in stronger investments.
- Introduce courses in law and business professional programs that directly pertain to the agricultural sector:
- Promote continuing training among bankers, lawyers, business development professionals, and others about specific investment issues pertaining to the agricultural sector, with an emphasis on managing risk.
- Support public awareness and training on good business practices and basic corporate governance through organizations and programs directed at small businesses and FBOs. Create education and training programs on basic business management, with a special emphasis on training rural entrepreneurs.
- Evaluate and act upon lessons learned from the vast presence of donor assistance in Ghana's agricultural sector:

PAYING TAXES RECOMMENDATIONS

- Implement existing laws and regulations more effectively. The tax code is widely acknowledged to be reasonable. With more effective implementation of the existing legal framework, perhaps some further improvements would be necessary.
- Establish more IRS offices in secondary cities to better service these and surrounding populations. Currently, agribusiness and other entrepreneurs must often travel far to pay their taxes; this inconvenience takes them away from their business and increases their costs for travel and other items. The IRS should have an office in Tema.
- Institutionalize and enforce standard operating procedures that require staff to always, always be in IRS offices on a published work schedule. Many incidents were cited of an IRS assessor not being available after a taxpayer had spent time and money to reach the office to pay taxes.
- Improve tax assessment procedures so that they are less arbitrary. Certain evidentiary claims (i.e., business losses, disasters) should be an acceptable basis for revising tax assessments downwards without having to appeal. Tax pre-assessment should be based on actual conditions versus prior year tax payments.
- Improve training of accountants and auditors so that they better appreciate cash flow issues unique to agriculture. Seasonality, losses, and gains are generally different for agriculture than for other sectors, yet accountants and auditors have not been very savvy on their handling of agribusinesses.
- Prohibit taxing business start-ups during the first six or so months, as this practice is contrary to private-sector growth.
- Strengthen the capacity of the Irrigation Development Authority to support irrigation schemes through simplified registration and fees, and to adequately assess and levy water use tariffs, including their timing.

TRADING ACROSS BORDERS RECOMMENDATIONS

- Recalibrate focus of recent development programs to increase attention to food crops, especially those that make up a large percentage of domestic consumption. Analyses of the Ghanaian economy suggest that increased food security and food affordability from strong growth in the food crop sector would have a major economywide impact that has been given short shrift to date.
- Revisit benefits, costs, and the process of becoming a signatory to the International Sale of Goods Convention. Becoming a signatory would provide a strong framework for increased international trade in goods.

- Clarify the status of the ECOWAS trade liberalization scheme (TLS) and further integrate the private sector in ongoing deliberations.
- Review the extensive documentation required for imports and exports, focusing in particular on the Ministry of Food and Agriculture. International benchmarks including Singapore and Denmark should be considered. Particular focus should be paid to documentation and procedures required for perishable products. Despite efforts to create a single window using GCNet, significant duplication of permits, licenses, and procedures still exists.
- Review policy on mandatory permits for imports/exports in light of similar regimes with less regulatory burden for the private sector; including trade licensing.
- Revise duty drawback system. CEPS should consider alternatives including holding the funds in short-term interest-bearing treasury bills, in order to guarantee the availability of and prompt payment of refunded import duties.
- Consider alternatives to the current system of vesting complete signatory authority of the certificate of origin (COO) to the Assistant Commissioner.
- Form a technical committee to consider the drafting of legislation on contingency measures. The government should help the private sector to better understand when dumping is and is not illegal under the current world trading system.
- Fast-track legislative drafting, review, and consideration for key agricultural bills including the Seed Law, Fertilizer Law, Food and Drug Law, and Biosafety Bill.
- Develop a public-private forum to consider issues around biosafety in Ghana, with a focus on genetically modified planting material.
- Prioritize the creation of a sustainable trade information system. Attention needs to be paid to (1) taking advantage of already existing information via GCNet, (2) providing market information cheaply and broadly, and (3) considering the formation of a public-private partnership to incorporate information from international market research firms on supply and demand trends.

ENFORCING CONTRACTS RECOMMENDATIONS

- Through a model that provides for sustainability and continuous updating, create a single, online repository of commercial laws.
- Use the Internet and other media to significantly strengthen information and other resources provided by the judiciary. The judiciary's website should be immediately expanded to list the types and locations of all courts in Ghana, not those just in Accra. Information about plans for expanding the Commercial Court and the fast-track high courts should also be provided, in response to the lack of information and awareness currently exhibited in the field. Information about other measures, including the specifics of anti-corruption initiatives and the development of land courts should also be detailed. Rules of court should be provided, along with forms, directions to courts, information about libraries and access to laws, and other key information. Efforts to gather and communicate this information will reveal where there are unaddressed issues, thereby presenting a clear opportunity to address them.
- Move forward with plans to bring a Commercial Court and fast-track high courts to regions beyond Accra.
- Continue anti-corruption initiatives in the courts, including posting of court fees; public admonitions against seeking or paying bribes; prosecution of corrupt behavior; and teaching of ethics in all formal environments, including the law faculties, the Ghana School of Law, the Ghana Bar Association, and the JTI.
- Consider introduction of small-scale arbitration programs in rural areas, so that disputes over agricultural contracts can be quickly resolved and enforced. Train local business people in arbitration.
- In any program that supports FBOs, include a component that underscores the usefulness of contracts and obligations associated with entering into contracts.
- Promote continuing training among lawyers, bankers, business development professionals, and others about specific contracting issues relevant to the agricultural sector; with an emphasis on managing risk.

CLOSING A BUSINESS RECOMMENDATIONS

- Provide assistance to Ghana's legal training institutions to offer courses on insolvency.
- Create workshops for the banking community to familiarize bankers with the insolvency law and bankruptcy concepts generally, with an emphasis on banks' roles in reorganization.
- Design and implement an outreach program to the universities to assist in the training of professors in bankruptcy and insolvency concepts and laws with a view of developing curriculum designed to educate law students on bankruptcy and other commercial concepts.

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