



# B&P ASSOCIATES

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Issue No. 17

August 2019

# African Consumer Protection within Digital Free Trade



**M**uch is being speculated for the future of commerce in Africa given this new era of the African Continental Free Trade Area (“AfCFTA”). As an unprecedented regional pact, AfCFTA has established the world’s largest free trade zone with a market of over \$1.2 billion people across 54 countries. The launch of AfCFTA, while a celebratory landmark, brings along mammoth responsibility for African states to take a critical look at the impact of free movement on security and privacy protection for citizens—a gap the wider international community has yet to conclusively achieve, with respect to having a globally-accepted set of standards.

The last twenty years have drastically changed the way the world trades. Consumers today are accustomed to every want being literally at their fingertips, through the help of digital buying platforms like eBay and Amazon. Although internet penetration in Africa lags behind the world average at just 35% approximately, indigenous companies such as Jumia—a freshman at the New York Stock Exchange—are taking advantage of what is a fast-growing digital consumer base. Today, African e-commerce firms have had to adopt a country-by-country business approach; from their websites, to product offerings and delivery models, almost every

aspect of the business begs to be localized. A continent-wide free trade area opens up opportunity not only for digital free trade, but also cross border data flow. Potentially, a company in Ghana could directly reach customers in Kenya without having any local footprint; and those customers could freely share their personal information—address location, banking and card details, etc.—with said business established over 6,000 km away. In what ways would the AfCFTA framework protect consumers’ privacy and security?

The Protocol on Trade in Services under the AfCFTA Agreement, makes it clear that the Agreement is not to be construed as preventing States from adopting measures that secure compliance with laws and regulations that protect individual privacy in the dissemination and processing of personal data, and the confidentiality of individual records and accounts. However, there are no specific directives under the AfCFTA Agreement as to how these are to be achieved and to what standard.

Further, while there is a mandate for the Council of Ministers to harmonize policies related to AfCFTA, State parties are left to continue in exercising their sovereign right to regulate pursuant to national policy objectives, so long as in doing so, they do not impair the rights and obligations under the AfCFTA Agreement.

Ghanaian consumers may rely on the recent Payment Systems and Services Act, 2019 and the Data Protection Act, 2012, to regulate electronic payment systems and services, as well as the processing, dissemination and storage of their personal information. However, it remains to be seen how seamlessly these protections will travel with the digital consumer, the continent over.

## Energy Update



### Energy Economics Debate

In line with Section 28 of the Public Financial Management Act, 2016, the Finance Minister presented the Mid-Year Budget to Parliament on the 29th July 2019. Amongst the expected declarations of tax cuts and spends, the issue of Take-or-Pay ("TOP") contracts took centre stage. In a review of public revenue and expenditure, the Government has taken a decision to renegotiate all TOP contracts in relation to extant Power Purchase Agreements ("PPAs") and Gas Supply Agreements ("GSAs"), envisaging future Take-and-Pay ("TAP") contracts, based on the actual demand of the nation. Although such a policy may inch up Government's revenue,

the debate of the day centres on its impact on existing contractual obligations. TOP contracts obligate the Government to pay for a quantity of gas that exceeds the country's peak demand. An example of an existing TOP contract is the Sankofa Offshore Cape Three Point Gas project.

### ENI is the major in the offshore race to Tano Basin

ENI in partnership with Vitol, has been awarded rights to one of the five Ghanaian oil blocks up for sale. ENI, together with Vitol will be the license operator. The joint venture will include the Ghana National Petroleum Corporation ("GNPC") and a local registered company to be identified during the contract finalisation phase.

### Aker Energy has \$100 million in the bag for DWTCTP

Aker Energy A.S. ("Aker Energy") has secured \$100 million to invest in crude oil and natural gas production from Ghana's Deepwater Tano Cape Three Points (DWTCTP) block.

The block, offshore Cape Three Points in the Western Region, contains multiple oil fields. The lender, the Africa Finance Corporation (AFC), a leading infrastructure solutions provider in Africa, has pledged its readiness to “participate in follow-on fundraising activities”. The DWTCTP field is one of Ghana’s principal hydrocarbon assets and is expected to contribute to near-term target with an annual production volume of 500,000 barrels of oil equivalent per day.

## Business Update



### **Mobile Money Interoperability...so far so good**

Mobile Money Interoperability (MMI), a favourite of Fintech companies, has recorded a total over 4.4 million transactions in its first year of operations. Beginning with just 96,907 transactions in its first month, public usage of the cross-network platform grew phenomenally to 502,873 transactions by first quarter of 2019.

The passage of the new Payment Systems and Services Law makes it obligatory for all mobile money operators, agents and institutions to obtain the relevant approvals and licenses from the Bank of Ghana.

### **The Marine Drive Project is timetabled**

The construction of the Marine Drive Investment Project is scheduled to commence in October this year, according to the Minister of Tourism, Creative Arts and Culture. The Project, a Public-Private Partnership, will occupy a stretch of approximately 215

acres of land, boasting hotel facilities, restaurants, conference centres, shopping malls, cultural villages, amphi-theatres and office space.

### **IPEP Gets off the Ground**

The Infrastructure for Poverty Eradication Programme (IPEP), a Government initiative aimed at meeting critical infrastructural needs at the constituency level has been given the green light. The Ministry of Finance has granted letters of commencement to the development authorities to commence the full implementation of the \$1 million per constituency pledge under the IPEP for the 2020 fiscal year. The commencement certificate makes available GH¢1.66 billion (\$320 million) for the 275 constituencies across the country.

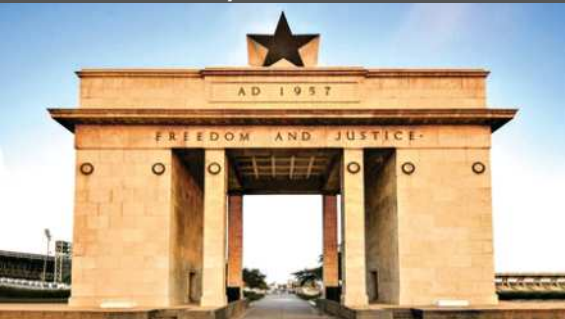
# Mid-Year Budget 2019 Digest



- Resolution by the Government to convert all TOPs to TAPs upon renegotiation subject to any necessary parliamentary ratification
- Moratorium on new PPAs and Put/Call Option Agreements ("PCOAs").
- Suspension of all PPAs under current negotiation.
- Future PPAs to be subjected to competitive tender and transparent procurement procedures.
- Increment in Communication Services Tax ("Talk Tax") from 6% to 9%.
- Inauguration of National Housing Committee for housing mortgage finance scheme.

- Increment in the Energy sector levy; by GHS 0.20 per litre for petrol and diesel, and GHS0.08 per kilogram for Liquefied Petroleum Gas ("LPG").
- Abolition of Luxury Vehicle Tax.
- Five (5) year tax holiday for One District One Factory ("1D1F") projects with tax exemptions for imports.
- Thirty (30) warehouses, each of 1000 metric tons' capacity, to be provided nationwide as storage facilities to reduce post-harvest losses.

You may have missed... Firm News



## Ghana is the Darling of the AfCFTA

Ghana will host the AfCFTA Secretariat. The Secretariat will facilitate, coordinate and support the implementations of the AfCFTA Agreement. As host country, Ghana will play a pivotal role as the commercial capital, regional trade hub and economic epicentre of Africa. The Secretariat is expected to be set up by March 2020.

## The new ECO

At the conclusion of an ECOWAS ("Economic Community of West African States") Summit in June 2019, 15 countries including Ghana, agreed to adopt a single currency called the ECO with effect from January 2020.



## B & P Associates in partnership with the Oxford Business Group

The Firm has been named the exclusive legal partner of the Oxford Business Group Report for Ghana. The Oxford Business Group is a research and advisory company; a trusted source for the world's leading corporations for current local business intelligence, with 25 years of reporting experience in 39 countries globally.

## WHO'S WHO?

In this Issue, we celebrate Dr. Kwame Nkrumah with our Feature. The Father of the Nation and the first President of Ghana. A man synonymous with Pan Africanism, a movement for cooperation between Africans. He is credited for the first All-African Trade Union Federation, inaugurated in Accra. Dr. Nkrumah's legacy is the AfCFTA .

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*This publication may provide a summary of legal issues but is not intended to give specific legal advice. If you require legal advice, please speak to a qualified lawyer, which may include a qualified member of our legal team at B & P ASSOCIATES. Visit us at [www.bpaghana.com](http://www.bpaghana.com)*