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# E-Levy

IN THIS ISSUE




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# Will The Anchor Hold? – Electronic Transfer Levy & Its Effect On The Fintech Space.

**Introduction**

The financial services industry, like many spheres of life, has evolved as a result of the massive influence of globalization. With technology advancing at galloping speed, the banking sector has managed to secure itself a very solid marriage between both disciplines in the bid to meet the needs of its constantly growing tech-savvy customer base.

This digital era is also characterized by the transaction of business through electronic mediums. The transfer of money, trading of goods, delivery of digital content and direct consumer marketing have been greatly impacted by technology such that Information Technology (IT) networks have become the primary vehicle for consumer purchases, mass marketing, financial transaction, and online information, entertainment and government services.[1] This underlies the decision of governments of developing countries to digitalize various aspects of their economy.

**The Leap from Traditional Banking to Fintech**

The digitalization of financial services has been on the rise globally. Riding on the shoulders of best practice, , Ghana and other developing countries have emulated the shining examples of developed states in this regard to support their financial inclusion agenda as well as to address the changing needs of customers. In response to this call to advance financial inclusion, Ghana introduced the mobile money services in 2009 following the issuance of the Branchless Banking Guidelines by the Bank of Ghana in 2008. This was the beginning of the journey from traditional banking to fintech.

This initiative extended financial services beyond the traditional branch-based channels and ensured that the common platform for the payments and settlement system such as e-zwich extended to branchless banking. The Bank of Ghana allowed this initiative to be rolled out by licensed deposit-taking financial institutions employing agents like telecommunication network providers, fuel distribution companies, post offices and merchants.[2]

In 2017, the Bank of Ghana issued Banks' Sort Codes to facilitate the efficient clearing and settlement of interbank paper payment instruments and to standardize payment instruments to make them amenable to automated processing.[3] The Central Bank


also issued in the same year, the Bank Identifier Code (BIC/SWIFT Code) for the purposes of easy identification of banks in international wire transfers.[4]

In May 2018, the Mobile Money Interoperability System was launched through the Ghana Interbank Payment and Settlement Systems Limited (GhIPSS) to allow individuals to transfer money across electronic money issuers (EMIs) or to bank accounts and vice versa.[5] This has reduced the services of third-party providers (token system) as well as the cost of initiating transactions across networks.

The result of this financial inclusion through digitalization is that, as of December, 2021 the number of active mobile money accounts stood around 19 million with the total mobile money transactions increasing from GHS 55 billion in 2017 to GHS 986 billion in 2021.[6]

## Fintech Legal Framework

Fintech in Ghana is regulated by both law and policy. Starting with the Payment System Act, 2003 (Act 662), the legal basis was established for the digitalization of interbank payments with the implementation of the real-time gross settlement system (RTGS)[7]: a platform that sought to improve interbank liquidity management, and significantly reduce credit and settlement risks.

The central bank in collaboration with other stakeholders revised the regulatory regime with the enactment of the Payment Systems and Services Act, 2019 (Act 987) to consolidate the laws relating to payment systems, and payment services, and to regulate the fintech space. Act 987 regulates the fintech space with other relevant enactments such as the Banks and Specialized Deposit-Taking Institutions Act, 2016 (Act 930), the Data Protection Act, 2012 (Act 843), the Anti-Money Laundering Act, 2020 (Act 1044), the Electronic Transactions Act, 2008 (Act 772), the Bank of Ghana Act, 2002 (Act 612) and the Cybersecurity Act, 2020 (Act 1038).[8]

The Payment Systems and Services Act, 2019 vests the overall supervisory and regulatory authority in the Bank of Ghana, to regulate the issuance of electronic money, payment instrument, payment services and electronic money business.

In view of this, the Bank of Ghana has established the FinTech and Innovation Office as part of the agenda to drive a cash-lite, e-payment and digitized economy. The FinTech and Innovation Office has since 2020 been responsible for the licensing and oversight of dedicated electronic money issuers (mobile money operators), payment service providers (PSPs), closed-loop payment products, payment support solutions and other emerging forms of payment delivered by non-bank entities.[9]

## The Electronic Transfer Levy Act, 2022 (Act 1075)

The solid foundation for the fintech space has led to significant improvement in both electronic transactions and ensuring a cash-free economy. Mobile money transactions have increased by over 1000% from 2017 to 2021 and the number of active mobile money accounts has shot up to about 19 million.[10] However, the fact that this facility resorts to alternative shopping avenues other than the traditional shopping system, makes it impossible to apply the Value Added Tax and National Insurance Levy which are sources of revenue to the government; hence the electronic levy (e-levy).

By the e-levy, the government seeks to widen the tax net and rope in the informal sector. This tax will be deducted anytime a person transfers money via mobile money or bank account and shall be borne by the sender except in the case of inward remittances where the charge will be borne by the recipient.[11] This levy shall be collected by the Ghana Revenue Authority through licensed Banks, Specialized Deposit-Taking Institutions (SDIs), Payment Service Providers (PSPs) and Electronic Money Issuers (EMIs) and paid into the Consolidated Fund.[12]

The tax rate is 1.5% of the value of the electronic transfer from the initially proposed 1.75% and it affects transfers valued above One Hundred Ghana Cedis (GHS 100.00) on a daily basis. Thus, any value exceeding GHS 100 from one account in a day shall attract a 1.5% charge.

The levy covers five types of transfers:

- Transfer done on the same EMI (transfers on the same mobile network).
- Transfer from one EMI to another EMI (transfers across networks).
- Transfer from a bank account to an EMI account (transfer from a bank account to a mobile network).
- Transfer from EMI account to a bank account (transfer from a mobile network to a bank account).
- Interbank transfers on digital platforms or applications (transfer from one bank app to another bank account).

Some transactions are exempt from the levy.[13] These transactions are as follows:

- A maximum transfer of GHS 100.00 per day made by the same individual.[14]
- Transfer between accounts owned by the same individual; be it mobile money to bank or bank to mobile money or from a mobile network account to another mobile network.[15]
- Transfers for the payment of taxes, fees and charges (ghana.gov system or any other government of Ghana designated payment system).[16]
- Electronic clearing of cheques by banks and specialized deposit-taking institutions.[17]
- Payments made to merchants through a payment service to a person registered with the Ghana Revenue Authority for the purposes of income tax and Value Added Tax.
- Transfer between principal, agent and master-agent accounts.

**Effects of E-Levy on the Fintech Space and E-Commerce**

Indeed, like any tariff, the e-levy is expected to serve as an additional source of income for the state. The levy serves as a means of taxing the informal sector that had prior to the introduction of this levy been barely reached by previous tax initiatives. It has been projected that the levy would rake in tax revenue of GHS 6.9 billion in 2022 and about GHS 26.90 billion from 2023 to 2025 after the implementation of the levy.[18] It is also projected that Ghana's tax to GDP ratio will increase from 13% to about 16% through the implementation of the e-levy.[19]

This not with standing, many economists, social analysts and the general public have lamented the possible negative effect this law may have on the government's digitalization agenda and the fintech space as a whole. There is at present an injunction application before the Apex Court of Ghana as to the implementation of the E-levy,[20] whilst others have suggested other sources of tax revenue ought to be considered by the government such as property rate, instead of proverbially putting all its eggs in the basket of revenue from taxing electronic transactions.

The core principle underlying the operations of fintech is financial inclusion and the achievement of a cashless system within the shortest possible time. It is the case that, in as much as consumers are influenced by faster and seamless services, they are also greatly influenced by by how affordable it is to transact business electronically.

A study by the United Nations Capital Development Fund (UNCDF)[21] revealed that there was a sharp decline in average transaction values after the implementation of the Excise Duty (Amendment) Act in 2018 in Uganda to introduce a Mobile Money tax of 0.5% on withdrawals. This decline was attributable to withdrawal from mobile money services by the people in the agriculture sector due to excessive charges. This clearly highlights the correlation between the growth of fintech and the volume of charges imposed on transactions as tax.

It can thus be inferred that the slightest increment in charges may lead to exclusion. The government in its analysis of the impact of the e-levy even predicts that 24% of users will drop off within the first couple of months.[22] However, the lifeline is that when users observe that the benefits of the levy outweigh the disadvantages, they will eventually revert to using digital services. This projection seems to suggest a willingness to trade off financial inclusion for effective domestic revenue mobilisation or to gamble with the two important economic phenomena. This poses a serious threat to the fintech industry in transactions and the number of customers. As more persons resort to electronic transactions, fintech grows. The converse is also true: once it is easier for the public to revert to the cash system, the greater the likelihood of the fintech space going downhill. This may even be self-defeating because when fintech suffers, the eventual outcome is experienced in revenue collection.

Further, some civil society organisation experts have argued that the fact that Act 1075 is so wide as to capture all financial technology transfers, poses a serious threat to the growth and sustenance of fintech in Ghana.[23] Unconvinced customers would have to elect between paying the tax to use any of the digital forms of transacting business and transacting business with cash. The outcome of this situation may carry more dire consequences than would have been the case had certain fintech platforms been exempted. It would mean that all the digital platforms will bear the effect of the levy, in addition to the tax already paid by the fintech operators on the fees charged per transfer and withdrawal.

Another effect is the cost of implementation. Being a novel tax regime, a lot of pre-implementation engineering would have to be put in place. Speaking on the Citi Breakfast Show, the Chief Executive of the Chamber of Telecommunications, Ing. Dr. Kenneth Ashigbey lamented that the infrastructure required for the implementation is lacking and this puts pressure on the telecommunication networks to, within a short period, integrate its system with the Ghana Revenue Authority (GRA), conduct user acceptance test and validation.[24] The GRA's proposed solution is to implement the e-levy in a modified-phased approach, with effect from May 1, 2022. However, the implementation coupled with the high operational cost that is expected to be borne by the fintech companies, can gravely impact the effectiveness and sustenance of fintech operations in Ghana. The least technical hitch that results in inappropriate deductions from customers may further cause the public to jolt away from the use of digital platforms and thus result in increased use of cash in the system, totally derailing the cash-lite agenda.

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## Conclusion

The E-Levy like any other government policy with financial implications will have social ramifications whilst providing the government with an innovative means to shore up the finances of the state. While the tax will fill in some financial gaps, it also stands to threaten the growth and sustenance of fintech. This comes from the likely return to a cash system being a natural response to the increase in charges for the use of fintech platforms. Further, the e-levy is not left out of the implementation challenges that have characterized many of such policies in the country.

Perhaps, should the implementation of the e-levy be done in less haste to allow for the establishment of essential structures required for its operation and the revenue mobilised from the levy targeted at the development of the country, there could be a win-win situation for both the state and fintech companies.

Indeed, in our unceasingly morphing global community where convenience is fast becoming a necessity rather than a luxury, fintech has come to stay. The question however remains, in Ghana, will the anchor


1.Capgemini's Financial Services Business Unit, World FinTech Report 2020, available at https://www.capgemini.com/news/world-fintech-report-2020/ (last accessed April 18, 2022).

2.Bank of Ghana, Guidelines for Branchless Banking. Notice No. BG/GOV/SEC/2008/21 available at https://pdf4pro.com/amp/view/bank-of-ghana-1d46d7.html (last accessed on April 6, 2022).

3.Bank of Ghana, Banks' Sort Codes, August 2017, available at https://www.bog.gov.gh/wp-content/uploads/2019/08/Bank-Branch-Sort-Codes-August-2017.pdf (last accessed April 18, 2022)

4.Bank of Ghana, Banks' BIC Codes, August 2017, available at https://www.bog.gov.gh/wp-content/uploads/2019/08/BANKS-BIC-Aug-2017.pdf (last accessed April 20, 2022)

5.Citinewsroom, Bawumia launches phase one of mobile money interoperability, available at https://citinewsroom.com/2018/05/bawumia-launches-phase-one-of-mobile-money-interoperability/ (last accessed April 20, 2022)

6.Electronic Transfer Act, 2022, memorandum.

7.Bank of Ghana, Keynote Address By Dr. Ernest Addison Governor, Bank of Ghana on December 11, 2021 available at https://www.bog.gov.gh/speeches/keynote-address-by-dr-ernest-addison-governor-bank-of-ghana-at-a-summit-on-digital-banking-and-cyber-security-organised-by-standard-chartered-bankon-march-21-2018 (last accessed April 18, 2022).

8.Payment Systems and Services Act, (Act 987) s. 2.

9.Bank of Ghana Press Release, Bank of Ghana Establishes Fintech and Innovation Office. 5th May, 2020. https://www.bog.gov.gh/pressreleases/bank-of-ghana-establishes-fintech-and-innovation-office/ (last accessed on April 18, 2022).

10.Ibid. n7.

11.Ministry of Finance, 2022 Budget and Economic Policy. Paragraph 316. Available at https://mofep.gov.gh/sites/default/files/news/2022_Budget_Statement_v3.pdf (last accessed April 7, 2022)

12.Electronic Transfer Levy Act, 2022, s. 4 & 5.

13.Ibid. at s. 2 (2).

14.Ibid. at s. 2 (2) (a).

15.Ibid. at s. 2 (2) (b).

16.Ibid. at s. 2 (c).

17.Ibid at s. 2 (f).

18.PWC 2022 Budget Digest https://www.pwc.com/gh/en/publications/budget-highlights.html (last accessed on April, 18, 2022).

19.Ghanaweb, FULL TEXT: Ken Ofori-Atta's 2022 address on E-Levy, economy, January 20, 2022. https://www.ghanaweb.com/GhanaHomePage/business/FULL-TEXT-Ken-Ofori-Atta-s-2022-address-on-E-Levy-economy-1449211 (last accessed April 18, 2022)

20. https://citinewsroom.com/2022/04/minority-files-injunction-application-against-implementation-of-e-levy/ (last accessed April 29, 2022)

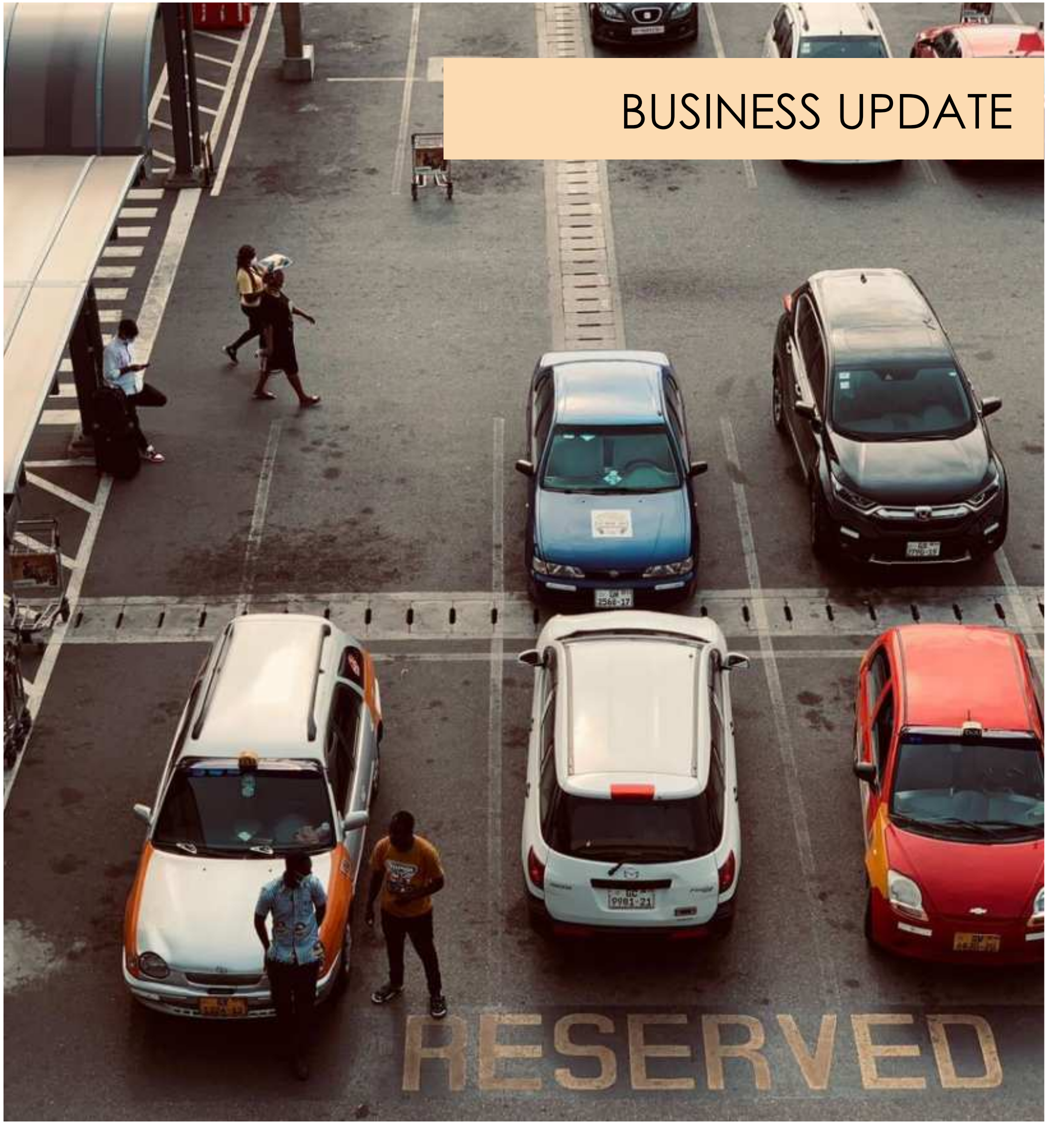
21.UNCDF, The Impact of Mobile Money Taxation in Uganda, November 22, 2021 https://www.uncdf.org/article/7313/the-impact-of-mobile-money-taxation-in-uganda (last accessed April 18, 2022).

22.

23.Bright Simons, Why is Ghana's fintech tax not finding favour?, April 1, 2022, published in https://www.theafricareport.com/189934/why-is-ghanas-fintech-tax-not-finding-favour/ (last accessed on April 6, 2022).

24.Citinewsroom, We'll do what is possible for implementation of E-levy next month – Telecoms Chamber , https://citinewsroom.com/2022/04/well-do-what-is-possible-for-implementation-of-e-levy-next-month-telecoms-chamber/ (last accessed on April 6, 2022).

# BUSINESS UPDATE

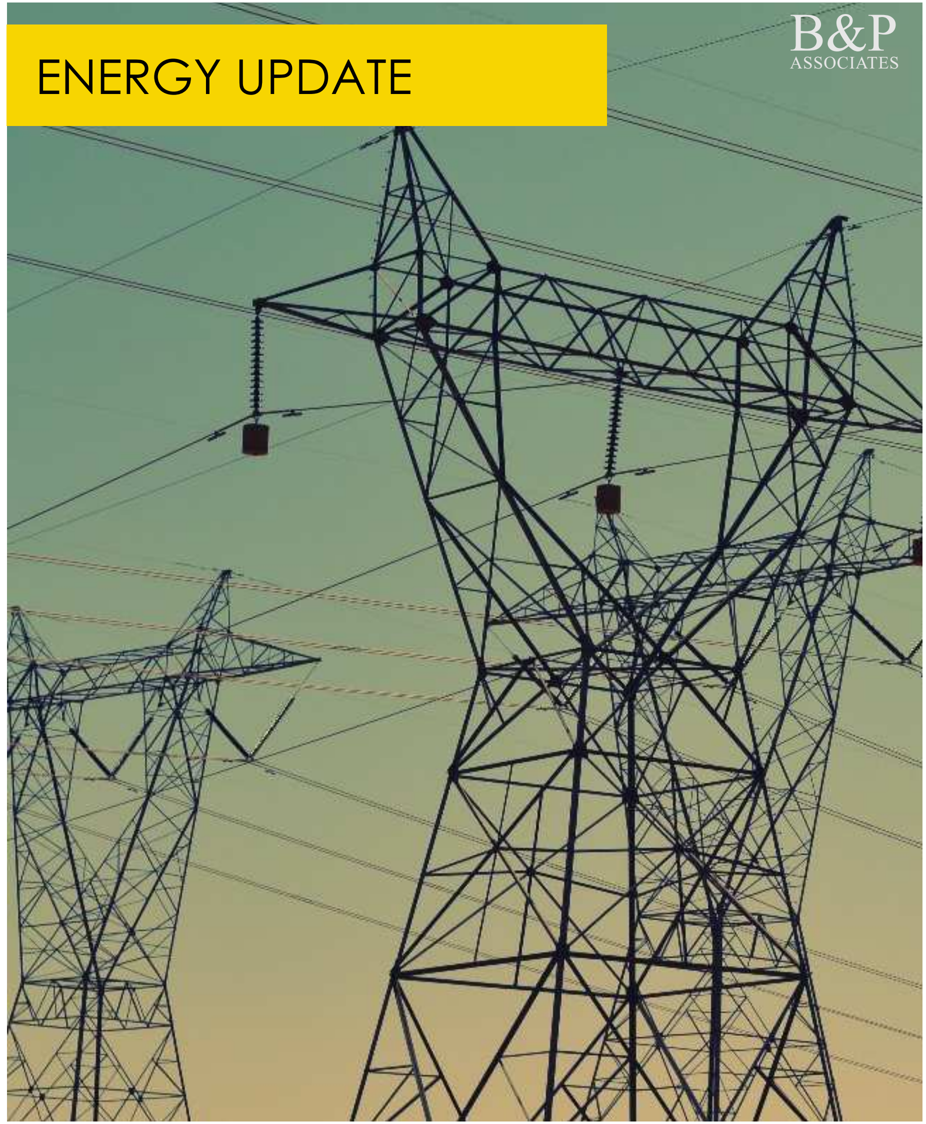



## Benchmark Policy Revision

The government introduced the benchmark value discount policy in an effort to make the Ghanaian ports more competitive and increase government's revenue. The policy provided a discount of 50% on the delivery or benchmark values of imports with the exception[10] of vehicles. The delivery values for vehicles were reduced by 30%. Effective March 1, 2022, the discount offered for vehicles stands at 10% (from 30%) and 30% for all other goods (from 50%).

## Review of Policy Rate to 17%

The Monetary Policy Committee (MPC) of the Bank of Ghana (BoG) has increased the policy rate by 250 basis points to 17%. The monetary policy rate signals the rate at which the Central Bank will lend to commercial banks and thus influences average lending rates on loans to individuals and businesses. From 1st April 2022, the BoG began the enforcement of the following measures in relation to universal banks: increase of the cash reserve ratio to 12%; resetting the capital conservation buffer and the provisional rate for loans in the other loans exceptionally mentioned category to the pre-pandemic level of 3%, making the capital adequacy ratio a total of 13%.




## Boost for Ghana's Energy Transition

The Parliament of Ghana has approved the €20 million loan agreement between the Government of Ghana and the German Development Bank Group, Frankfurt am Main, to finance the Green Credit Line (GCL). The loan agreement seeks to promote the development of renewable energy and further boost energy transition in the country by increasing clean energy production.

## Mineral Income Investment Fund closes Asante Gold Corporation deal in global markets move

The Minerals Income Investment Fund (MIIF), has acquired over 14.4 million ordinary shares in an investment deal in Asante Gold Corporation (AGC), a Mining Exploration and Development company listed on the Toronto and Frankfurt Stock Exchanges. MIIF's decision to invest in AGC aligns with its strategic objective of holding significant equity positions in high-yielding mines in Ghana and globally, if the metrics are correct.

**Electronic Transfer Levy Act, 2022 (Act 1075)**

The much-debated Electronic Transfer Act, 2022, (E-Levy Act) was assented to on 31st March 2022. The Act permits the imposition of a levy of 1.5% on electronic transfers including mobile money transfers done between the accounts of different individuals. The implementation of the levy is expected to commence on 1st May 2022, in modified phases.

**Petroleum (Local Content and Local Participation) Amendment Regulations, 2021 (L.I.2435)**

This legislative instrument amends the Petroleum (Local Content and Local Participation) Amendment Regulations, 2013 (L.I.2204). Enacted on 30th November 2021 and entering into force on 17th February 2022, L.I. 2345 introduces the concepts of 'channel partnerships' and 'strategic alliance', which are arrangements between Indigenous Ghanaian Companies (IGCs) and Non-Indigenous Ghanaian Companies (NGCs) with the aim of developing local content and local participation as well as maximising technology transfer to the IGC. L.I. 2345 also limits the ambit of IGC to companies that are fully owned by Ghanaian citizens, thereby increasing the equity participation of Ghanaian citizens from the initial 51% to 100%. The new L.I. also reserves the supply of specific goods and services in relation to petroleum activities for IGCs.

**Patent (Amendment) Act, 2020 (Act 1060)**

The Patents (Amendment) Act, 2020 was promulgated on 29th December 2020 and amends the Patents Act, 2003 (Act 657). The highlights of Act 1060 include the expansion of the list of items exempt from patent protection to include natural living things and pre-existing substances for which new use has been discovered and the introduction of disclosure requirements in patent applications. It also defines "industry" to include human economic activities that result in the production or manufacture of goods and services such as handicrafts, agriculture, fisheries and hospitality services rather than the previous definition which only focused on the services.

Further, Act 1060, authorizes the Registrar-General to restore a lapsed patent where the period of default does not exceed one year and the non-payment of fees is justified or the rights of third parties that have accrued are not adversely affected.

# WHO's WHO?[16]


Prof. Elsie Effah Kauffmann is the first female Dean of the School of Engineering Sciences of the University of Ghana, Legon. Her appointment is effective 1st August 2022. She is an Associate Professor of the University of Ghana and the President of the Ghana Society of Biomedical Engineers. Prof. Kauffmann has been the host of the National Science and Maths Quiz for 16 years.

# FIRM NEWS



**Managing Partner Appointed Member of First Governing Board of Ghana's Cyber Security Authority**

Our Managing Partner, Mrs. Adelaide Benneh Prempeh has been appointed as a Member of the First Governing board of Ghana's Cyber Security Authority.

The Cyber Security Authority, a recent creation by the Cyber Security Act, 2020 (Act 1038) has been established to regulate cyber security activities in Ghana; promote the development of cyber security in the country and make provision for related matters within the country's cyber security ecosystem.


**The Report: Ghana 2022 by the Oxford Business Group has been published**

The Oxford Business Group (OBG) and B&P Associates signed a Memorandum of Understanding (MoU) of exclusive partnership under which B&P Associates produced the Legal Framework Chapter of OBG's publication, The Report: Ghana 2022.

The Legal Framework Chapter of The Report provides a detailed analysis of landmark legislation introduced in Ghana over the past year, which includes legislation Public-Private Partnership Act, 2020, the New Corporate Insolvency and Restructuring Act, 2020, and the Borrowers and Lenders Act, 2020, among others.

OBG is a research and advisory company for current local business intelligence; a trusted source with 25 years of reporting experience in 39 countries globally. The Report: Ghana 2022 is available on all OBG's platforms. Click [here(https://oxfordbusinessgroup.com/ghana-2022).](https://oxfordbusinessgroup.com/ghana-2022)


**Managing Partner speaks at Waber Construction Seminar 2022**

Our Managing Partner, Mrs. Adelaide Benneh Prempeh was a speaker at the just ended Waber Construction Law Seminar, 2022, held on the 26th and 27th of April 2022. Her segment was focused on 2 topics:

1. Key Trends in Procurement and Contracts for Infrastructure Projects – The Ghanaian Perspective; and

2. Professional Liability in Infrastructure Projects.

The first session focused on current trends in procurement and contracts for infrastructure projects from Ghana's perspective. This entailed current trends in the Ghanaian infrastructure industry; types of projects being undertaken; means of procurement; types of contracts employed, (including FIDIC Conditions of Contract) and the implications for stakeholders in infrastructure projects and contracts. The relevant and updated legislation that governs the industry in Ghana was also presented.

The second session involved an in-depth discourse on professional liability, risk assessment and management in infrastructure contracts. She considered the relevant laws of Tort and Liability and the implications for various construction professionals in Ghana, as well as the role of these professionals in mitigating the associated risks and liabilities, with Insurance as a risk management tool highlighted as an integral part of the presentation.

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**About B & P ASSOCIATES**

B & P ASSOCIATES is ranked as a Legal 500 Europe, Middle East & Africa (EMEA) Leading Law firm. We are a Corporate and Commercial legal practice and consultancy, with an excellent reputation, based in heart of Accra. The Team is highly regarded for its cross-border legal expertise, responsiveness and commitment. We provide business-oriented legal advice across a range of sectors, to both local and international clients. For more information, visit us at www.bpaghana.com to learn more about what we do.

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