

LAND ACQUISITION

B&P
ASSOCIATES

Lawyers & Consultants

IN THIS ISSUE

- Restrictions on the Alienation and Use of land in Ghana
- Ghana and the Atlantic Cooperation
- Business Updates
- Legislative Update
- Judicial Corner
- WHO's WHO?
- Firm News

Issue No. 32
May, 2023



LAND ACQUISITION

RESTRICTIONS ON THE ALIENATION AND USE OF LAND IN GHANA

One of the most valuable assets that a person can acquire in Ghana is, land (immovable or real property). As defined by Ollenu J. (as he then was), now reflected in the Land Act, 2020 (Act 1036): “the term land, includes the solid surface of the earth, trees, plant, crops, and other vegetation, a part of the earth surface covered by water, any house, building, or structure whatsoever, and any interest or right in, to, or over immovable property;”¹

Land must be acquired through lawful means. The Land Act, 2020 recognizes various means of acquiring land viz; through compulsory acquisition by the government,² conquest, pioneer discovery, and settlement, gift, purchase or inheritance, the exercise of an inherent right by a subject or member of a stool or family, and settlement for a minimum of 50 years.³

In recent times, the most common means of acquiring land in Ghana has been through

alienation: the voluntary gift or sale of the title to a parcel of land to another party. This concept of alienation is not unbridled. There are certain restraints on some categories of transactions and on the alienation of certain types of land that prohibit owners from transferring or selling land at will.

These restrictions have been categorized under headings as follows:

a) Alienation of Group-Owned Land

Group-owned lands are the lands mainly owned by stools, families, clans, and skins. These lands are vested in the appropriate stools and skins (the custodians/occupants) and, clans and families on behalf of and in trust for their respective subjects and members in accordance with the applicable customary law and usage.⁴

The first restriction on the alienation of this type of land is that it cannot be lawfully alienated without the occupant of the stool or skin or the head of family or clan involved.⁵ Any alienation without the head of family or the rightful occupant of the stool or skin will render that transaction void.⁶

Furthermore, no transaction can validly create a freehold interest in a group-owned land in favour of another person.⁷ Such alienation is proscribed by the 1992 Constitution of Republic of Ghana ("the Constitution"). The policy rationale behind this law is that group-owned lands are for the past and living generation and the generation yet unborn. Therefore, the custodians of the land are required to preserve it as property that can be enjoyed by the yet-unborn as well.⁸

b) Alienation to Foreigners

Article 266 of the 1992 Constitution proscribes the creation of a freehold interest in land in any person who is not Ghanaian. In effect, any transaction that seeks to or in fact creates a freehold interest in a foreigner is void.⁹ A foreigner is strictly entitled to only leasehold interests in Ghana but for a maximum term of 50 years at any one time.¹⁰

In terms of corporate acquisitions, a corporate body that has less than 40% of its equity shareholding or ownership held by foreigners is deemed as a citizen of Ghana and therefore is capable of acquiring the maximum leasehold interest of 99 years at any one time.¹¹

c) Alienation for Farming Purposes

The newest addition to the range of restrictions on land acquisition is imposed on farmlands and farming rights. Section 22 of Act 1036 sets the parameters for the exploitation of farming rights.

Any alienation of a group-owned land for poultry farming or for the cultivation of cereals is restricted to a maximum term of

25 years. In the same vein, if the purpose of the acquisition is to cultivate tree crops or timber or for ranching, the maximum term a person can acquire is 50 years.

In terms of land size for the cultivation of annual or perennial crops or animal husbandry, an individual is restricted to a maximum of 640 acres per grant or an aggregate of 1920 acres. Likewise, a corporate body may obtain a maximum of 3200 acres per grant or an aggregate of 6400 acres.

However, where it appears to the President of the Republic of Ghana ("the President") that the aforementioned restrictions under certain circumstances are prejudicial to the national interest, the restriction may be relaxed for alienation to be made in excess of the limits given.¹²

These restrictions are to ensure that the land is not subjected to any use that will affect the subjects or members of the owning group and food production in the country as a whole.

d) Alienation, Control, and Exploitation of Natural Resources

One of the justifications given by families, clans, and stools on whose lands illegal mining activities are carried out is that they have the right to deal with the land anyhow they please. This reason is untenable in law because natural resources do not form part of land as defined above.

Article 257 (6) of the 1992 Constitution vests all minerals in their natural state under or upon any land in the President as the property of Ghana to be held in trust for Ghanaians. Given this, a restriction has been placed on the exploitation of such minerals to the effect that any instrument that disposes of a group-owned or an individual's land does not grant a right or title in any natural resources in, under, or on the land.¹³

In effect, the alienation of land does not include the control and exploitation of natural resources. Any transaction to the contrary shall have no effect and it shall be an offence to exploit them without a license or the appropriate permit.¹⁴

e) Marital Property

Profoundly, the Land Act 2020 has departed from the common law rule of presumption of advancement in terms of the transfer and acquisition of land which states that where a man acquires property in the name of his wife without expressly stating that it is for him or both spouses, the law presumes that such alienation was a gift to the wife.

The Supreme Court explained in the case of Richmond Boamah Berimah v. Albert Nanor, Janet Opoku, and Pastor Dan Cato that the rule of presumption of advancement is based on the obligation of a husband to provide for a wife and the resulting relationship of dependency that is presumed to exist between a husband and wife. On account of that presumed dependency, the court stated that the presumption does not apply in the converse situation where a woman acquires property in the name of her husband.

However, Section 38 (3) of Act 1036 provides that unless it is expressly stated in the deed of transfer that only one spouse shall own the interest in the land, the law shall construe the land as a jointly acquired property. Therefore, even though it may be in the name of only one spouse, that spouse

shall be presumed to be holding the land in trust for both spouses.¹⁶ In effect, if a wife acquires an interest in land in the name of her husband, the husband shall hold the land in trust for the two spouses, likewise whereas a man buys land in the name of the wife.

Another restriction in this regard flows from the concept of joint ownership as explained above. It is to the effect that unless the spouses have an agreement to the contrary, a spouse is not allowed to alienate or mortgage the land or any interest therein or enter into any transaction relating to the land without the written consent of the other spouse.¹⁷ The spouse who withholds consent to that alienation or transaction is supposed to have reasonable grounds. The consent required should not be unreasonably withheld.

In conclusion, the laws on land have been revised and harmonized to ensure sustainable land administration. One of the most significant revisions is the introduction and reaffirmation of legal restrictions on the alienation and use of land in Ghana. It is useful for all to take notice of the aforementioned restrictions, and to undertake the necessary due diligence

assessment in the acquisitions and use of land in accordance with the law.

1. Section 281, Act 1036.
2. In accordance with Article 20, Constitution, 1992
3. Sections 2 – 5, Act 1036
4. Section 9, Act 1036; Saaka v. Dahali [1984-86] 2 GLR 774; Gyeabour II and Others v Ababio [1991] 2 GLR 416
5. Allotey v. Abrahams (1957) 3 WALR 280
6. Ibid
7. Section 9 (2), Act 1036
8. N. A. Ollenu: The Law of Testate and Intestate Succession in Ghana. London: Sweet and Maxwell, 1966. Pg. 280
9. Article 266 (2); Section 10 (2), Act 1036
10. Section 10 (6), Act 1036.
11. Section 10 (10), Act 1036
12. Section 22 (3), Act 1036
13. Section 21, Act 1036
14. Section 9. Minerals and Mining Act, 2006 (Act 703)
15. [Unreported Judgment] Civil Appeal No. J4/22/2020 Delivered on 24 March, 2021.
16. Section 39(3), Act 1036
17. Section 47, Act 1036

LAND ACQUISITION



THE ATLANTIC COOPERATION

The Atlantic Cooperation is an initiative by the United States of America (USA) and eighteen other coastal countries bordering the Atlantic Ocean that focuses on worldwide environmental cooperation to solve today's environmental problems and prepare the way for posterity to thrive. These members of this initiative include Angola, Argentina, Brazil, Canada, Costa Rica, La Côte d'Ivoire, Equatorial Guinea, Ghana, Guinea Bissau, Ireland, Liberia, Mauritania, the Netherlands, Norway, Portugal, Senegal, Spain, and the United Kingdom.

The Atlantic Cooperation members seek to strengthen cooperation to accomplish shared goals which are to avert, mitigate or solve environmental and maritime issues relating to the Atlantic coast. These may include piracy, transnational crime (e.g. trafficking), Illegal Unreported Unregulated (IUU) Fishing, and environmental degradation (i.e. pollution and climate change). The Cooperation also shares a commitment to sustainable economic and environmental development to achieve maritime governance and



security goals.

The Cooperation will work in accordance with the 1982 United Nations Convention of the Law of the Sea (UNCLOS) which is the legal framework that governs all maritime activity. As part of preserving the ocean as a healthy, resilient, and sustainable resource for posterity, cooperation in accordance with UNCLOS will conserve the biodiversity, trade routes, and other potentials of the ocean economy.

To achieve all these and more, the Cooperation has put together an inclusive economic model to be coupled with the

transfer of technology and scientific innovation which will build climate resilience, conserve the ecosystem and curb marine pollution among other problems facing the Atlantic community.

The Atlantic Cooperation Initiative will collaborate with other bodies with shared goals such as the Atlantic Center, Yaoundé Architecture, All-Atlantic Ocean Research, Innovation Alliance, G7++ Friends of the Gulf of Guinea, and Zone of Peace and Cooperation in the South Atlantic. Fisheries bodies and organizations working for a sustainable ocean economy along the Atlantic coast will not be left out.

BUSINESS UPDATES

Ethiopian Airlines to become biggest International Airline Operator in Ghana

Mr. Mesfin Tasew Bekele, CEO at Ethiopia Airlines has reported that, effective 26th March 2023, the company has increased its flight frequency at the Kotoka International Airport from 7 to 11. This makes Ethiopian Airlines the largest international airline servicing the Kotoka International Airport. The introduction of the 4 additional flights to their existing 7 weekly noon flights will enable the Addis Ababa-based airline to connect Accra to

more African destinations.

This development is also aimed at providing more travel options to passengers on board their sister airline, ASKY Airlines. The Area Manager of Ethiopian Airlines Ghana, Sierra-Leone & Liberia, Mrs. Aniley Eshetu, reiterated the commitment of the company to the Ghanaian market, as its contribution to help Ghana benefit from the African Continental Free Trade Area (AfCTA).

Pensioners who failed to tender old bonds have been exempted at the 3rd Phase of DDEP

The Minister of Finance, Ken Ofori-Atta gave a policy brief on the newest development in the Domestic Debt Exchange Programme (DDEP) in Parliament. He announced that all pensioners who failed to tender their old bonds for new ones under the DDEP have been exempted from the programme.

This directive was necessitated by the four-day picketing at the Finance Ministry by Pensioner Bondholders Forum. Ken Ofori-Atta assured the pensioners that their bond coupons would be honored when at their respective maturity dates.

Ghana joins Atlantic Cooperation Initiative as Founding Member

On 28th March 2023, the President of Ghana, Nana Addo Dankwa Akufo-Addo announced that Ghana has accepted the invitation of the United States of America (USA) to join the Atlantic Cooperation Initiative as a founding member. The announcement was made at the State Banquet in honor of the Vice President of the USA, Kamala Harris, when she visited Ghana.

The initiative aims at fostering a peaceful, prosperous, open, and cooperative Atlantic region. It further looks to build a shared capacity, innovative technologies, and best practices. Members of the community also include Angola, Argentina, Brazil, Canada, Costa Rica, La Côte d'Ivoire, Equatorial Guinea, Guinea Bissau, Ireland, Mauritania, the Netherlands, Norway, Portugal, Senegal, Spain, and the United Kingdom.

The President assured the USA of Ghana's collaboration at all levels to solve problems of poverty, irregular migration, insecurity, and human rights violations, and encouraged more American investments in Ghana.

Chinese Investors to Build Largest Sugar Producing Factory in Ghana

The Bui Dam Hydro Power Generation Station and the Bui Power Authority (BPA) have signed a Memorandum of Understanding with Chinese investors to build the largest sugar-producing factory in Ghana. The construction site is around the Bui Dam enclave in the Banda District of the Bono Region and construction work is expected to commence in June 2023. On completion, the factory will produce

about 60,000 tons of sugar for domestic and international use. Mr. Dzamesi noted that the project has already created about 500 jobs and hopes 5000 more indirect jobs will be created upon completion of the factory.

DBG Advances GHS300 million to Financial Institutions in Ghana

The Deputy Chief Executive Officer (CEO) of the Development Bank Ghana (DBG), Mr. Michael Mensah Baah has disclosed that 1000 local businesses have been credited with GHS 300 million worth of loans as well as technical assistance. Mr. Mensah Baah said the intervention was based on a wholesale banking model targeted at agribusinesses, manufacturers, and ICT-focused fields which are catalytic sectors of the economy.

Mr. Baah added that DBG has in the pipeline, arrangements to introduce a partial guarantee system that will share the investment risks with other banks in the above-named sectors. DBG also plans to invest GHS 500 million in the production of soybeans, maize, rice, and the like, as part of enhancing food security long-term.

As of 17th April 2023, the Parliament of Ghana had passed the following into law:

The Three (3) New Revenue Bills

As part of the Government's quest to mobilize revenue domestically, Parliament has passed the Excise Duty and Excise Tax Stamp (Amendment) Bill, 2022, the Income Tax (Amendment) (No. 2) Bill, 2022, and the Growth and Sustainability Levy Bill, 2022 under certificates of urgency.

The Excise Duty and Excise Tax Stamp (Amendment) Bill imposes a 20% tax on cigarettes and e-smoking devices, sweetened beverages, spirits, and wines. The Growth and Sustainability (Amendment) Bill, 2022 replaces the

National Fiscal Stabilisation Levy Act that imposes a levy on companies operating in selected sectors. The Income Tax (Amendment) (No.2) Bill has reintroduced the 10% tax on winnings from lottery (including online betting) that was scrapped in 2017.

These are part of the measures to meet the IMF bailout criteria as the bills are to shore up revenue to enable the government to get approval for the \$3 billion International Monetary Fund (IMF) Programme. These bills have received presidential assent.

Criminal Offences (Amendment) Bill, 2021

This Bill has amended the Criminal Offences Act, of 1960 (Act 29) by repealing Section 57 (2). This consequentially amends the interpretation of "mental disorder" as provided for in Section 97 of the Mental Health Act 2012 (Act 846) to provide access to mental health care services to survivors of suicide attempts. In effect, a suicide attempt is now considered a mental health issue requiring assistance rather than a criminal offence. The bill has received presidential assent.

President Swears in 21 New High Court Justices

The President has administered the Oath of Allegiance, Judicial Oath, and Oath of Secrecy to twelve (12) men and nine (9) women High Court justices at the Jubilee House in Accra. This took place in February 2023. During their swearing-in, the President admonished the judges to eschew corruption, display honesty, integrity, and a sound knowledge of the law.

The new justices are:

His Lordship Justice Kwame Polley;
His Lordship William Appiah Twumasi;
His Lordship Baah Forson Agyapong;
Her Ladyship Marian Affoh;
His Lordship Nana Brew;
Her Ladyship Abena Amponsah Buansi;
Her Ladyship Ellen Lordina Serwaa Mireku;
Her Ladyship Priscilla Dapaah Mireku;
His Lordship Alexander Oworae;
Her Ladyship Joyce Boahen;
His Lordship Edward Twum;
Her Ladyship Gwendolyn Millicent Owusu;
Her Ladyship Rosemary Baah Tosu;
His Lordship Frederick Kwabena Twumasi;
Her Ladyship Adelaide Abui Keddey;

His Lordship Karry Acheampong Opoku;
His Lordship Kenneth Edem Kudjordjie;
His Lordship John Mark Nuku Alifo;
His Lordship Kwesi Adjenim Boateng;
His Lordship George Aikins Ampiah Bonney;
and Her Ladyship Marie Louise Simmons.

New Courthouses Inaugurated in Ho, Somanya, and Juapong

New courthouses were inaugurated in Ho, Somanya, and Juapong in March 2023. The Chief Justice has inaugurated a new Circuit Court in Juapong in the North Tongu District and a new courthouse in Ho to replace the old High Court in the Ho Municipal of the Volta Region. Finally, another new High Court has been inaugurated in Somanya, the capital of the Yilo Krobo District in the Eastern Region. The inauguration of each court was attended by the chiefs, queen mothers, and natives of the respective towns. Also present with the Chief Justice were the Judicial Secretary, some directors and staff of the Judicial Service, and some justices of the superior courts.



At these inauguration events, the Chief Justice encouraged the public to utilize court-connected alternative dispute resolution, for the resolution of their litigation disputes, in order to maintain better relationships in their businesses, or with their families.

Practice Direction on Drawing Up Entry of Judgment

The Supreme Court in the case of Ken Kwame Asamoah vs. State Insurance Company, has given Practice Direction with regard to the drawing up of Entry of Judgment in a civil suit. The Court observed that when judgment creditors or their lawyers are allowed to interpret judgment and draw up their own entry of judgment, others often suffer wrongful demolishing of their properties or are thrown out of their businesses for excess debts, due to false representations made in the entry of judgment.

Therefore, the purpose of the Practice Direction is to guide parties, lawyers, judges, and Registrars in the drawing up of

the Entry of Judgment to avert such injustices.

Trial judges are required to summarize and specifically state all enforceable orders made in their judgments at the end or at the conclusion of the judgments. Registrars of the courts are also required to carefully review notices of entry of judgment to ensure that the contents represent the orders given by the court. Lawyers who represent judgment debtors are expected to carefully scrutinize the notice of entry of judgment to ensure that the contents are in line with the order or judgment actually given by the Court. Lawyers who represent judgment creditors are to be mindful of their ethical duties when signing an entry of judgment after trial.

WHO's WHO?



Commissioner of Police, Nathan Kofi Boakye, ended his tenure with the Ghana Police Service with a gratitude statement on the 5th of April 2023 as he turned 60 years old.

Commissioner Boakye has been in the Ghana Police Service for more than 30 years and headed its Legal and Prosecution Division. He also served as the Director General in charge of Research and Planning and as the Ashanti Regional Commander.

He gained popularity in 2005 during his tenure as the police chief in the Ashanti

Region when he implemented a dynamic approach to apprehending criminals namely "Ataa Ayi".

Nathan Kofi Boakye holds a Bachelor of Science degree in Biochemistry from Kwame Nkrumah University of Science and Technology and is a trained ballistic analyst from the Metropolitan Police Support Services, United Kingdom where he obtained a certificate in Ballistics. He also holds a Master's Degree in Public Administration from the University of Ghana, Legon, and a Postgraduate Certificate in Administration from Leicester University, UK.

COP Kofi Boakye is a Barrister and Solicitor of the Supreme Court of Ghana. We thank him for his service to the nation and wish him the very best whilst on retirement.

FIRM NEWS



B&P Associates



TOP TIER

2023

[B&P ASSOCIATES, Lawyers & Consultants](#) retains Top Tier Firm ranking in both [The Legal 500 \(Legalease\)](#) Europe Middle East and Africa (EMEA) 2023 and Chambers & Partners Global Guides for the Commercial Corporate and Mergers & Acquisitions (M&A) Category. We are delighted and extremely grateful to our cherished Clients for the support and the opportunity to consistently provide them with excellent service.



Promotion in the Firm

Two illustrious Legal Associates have been promoted to the position of Senior Legal Associate. The firm is delighted to announce to all clients and the general public that **Maame Barnie Adu Amoah** and **Michelle Nana Yaa Essuman** are now Senior Associates of the Firm. Their enthusiasm, hard work, the consistency as well as excellent attitude towards work, the team, and our clients have contributed greatly to the firm's development.

B&P Associates hosts Students from the University of Pennsylvania Carey Law School (UPENN)



B&P Associates, WiLDAF intensify education on domestic violence to mark IWD-2023



YFM launches 2023 Y Clash of the DJs
...set to unleash next generation of talent

As part of the firm's corporate social responsibility, [B&P ASSOCIATES, Lawyers & Consultants](#) (BPA) had the pleasure of hosting 9 students from the University of Pennsylvania Carey Law School in March, for the entire week during the launch of our Community Legal Outreach program.

To celebrate, BPA partnered with the students from the University of Pennsylvania Carey Law School (UPENN Law) and other agencies such as WiLDAF to engage in various community activities addressing issues such as Domestic Violence and Women Empowerment.

Their stay was coupled with a variety of activities including visits to the Elmina Castle, Kakum National Park, Independence Square, Nsawam Prisons, the Supreme Court of Ghana, an outreach to the Okushiebiade Community and the Head Office of the Domestic Violence and Victims Support Unit of the Ghana Police Service in Accra.

The UPENN team took the opportunity to share their thoughts on their Prison Visit. The conversation was an insightful account of their experience of the prison visit considering how different societies both in Ghana and the United State of America, approach crime, punishment and prison recidivism.



Managing Partner in Kigali for the INSOL International and World Bank Group Africa Table Conference

Our Managing Partner, Adelaide Benneh Prempeh, honoured an invitation to Kigali, Rwanda for the INSOL International and World Bank Group Africa Table Conference in March 2023. This Conference was organized in partnership with the World Bank Group, and with assistance from the Rwanda Development Board and the State Secretariat for Economic Affairs of Switzerland (SECO). It sought a high-level dialogue with both private practitioners and public policymakers regarding insolvency reform in Africa.

The Managing Partner was a key participant in the round table discussion where she shared insightful ideas about

how to elevate insolvency reforms on the African policy agenda and shared the Ghanaian experience in that regard.



Waber Conference: Construction Law Seminar 2023.

Our Managing Partner, [Adelaide Benneh Prempeh](#) joined an Expert Panel of Speakers at the [WABER Conference Construction Law Seminar](#) next week scheduled for the 25th and 26th of April 2023.

The two-day conference discussed new trends in infrastructure law, procurement and contracts, dealing with contract delay and claims, forms of contracts for major infrastructure works and consultancy services, the FIDIC suite of contracts amongst others.

Other Speakers included [KH Osei Asante](#), [Rob Morson](#) of Pinsent Masons, [Jeremy Glover](#) of Fenwick Elliot LLP and [Priyesh Daya](#) of Webber Wentzel.



Four Legal Associates of the Firm received Certification in Construction Law this year at the 2-day Waber Conference held on the 25th and 26th of April 2023. Michelle Nana Yaa Essuman, Maame Barnie Adu-Amoah, Bessy Agyeiwaa Crentsil, Priscilla Wepia Ametame are now FIDIC Certified in Construction Law. Topics covered include new trends in Infrastructure law, procurement and contracts, Dealing with Contract Delays and Claims, Understanding forms of contract for major infrastructure works and consultancy services in Ghana and contract disputes and international arbitration.

CONTRIBUTORS

- [1. Prince Benson Mankotam](#)
- [2. David William Akuoko Nyantakyi](#)
- [3. Bubu Mansa Sedanu Kwawu](#)
- [4. Olga Quarshie](#)

B & P ASSOCIATES

About B & P ASSOCIATES

B&P ASSOCIATES is ranked as a Legal 500 Europe, Middle East & Africa (EMEA) and a Chambers & Partners Global 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 <https://www.bpaghana.com> to learn more about what we do.

The Firm launched its Podcast at the beginning of this year - "Community FIRST; A BPA Podcast - Legal and Social conversations with the Community".

The focus of the Podcast is to have riveting legal and social conversations with team members of the Firm, various organizations, and a cross-section of experts and practitioners. Invited guests will be encouraged to share their respective views on various legal issues that matter most to our community. We are excited about building effective partnerships and collaborations to enrich the quality of our discussions. We look forward to playing a positive role in empowering individuals with the knowledge of the law as a tool for creating lasting, positive change.

Listen here for the latest Episode on Intestate Succession Law of Ghana:
<https://lnkd.in/eCxaEK54>

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



Legal and Social Conversations with the Community