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Comparative study of foreign investment laws: The case of China and Ghana

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Abstract: This article provides a comparative legal study of some relevant features of the Chinese and Ghana Foreign Investment Laws (FIL), keeping in mind the differences in both countries constitutions and legal systems. Ghana is comparatively more developed, socially and economically, than other countries in sub-Saharan Africa and as such perceived by other scholars and foreign investors as a suitable place for foreign investments partly due to a suitably educated workforce, cheap labor costs and its natural resources. However, the effect of the foreign investments in accelerating the development of the country is a concern though the government seeks to attract gigantic foreign investment, which is also regarded as a possible solution to the mounting current account shortage problem. On the other hand, China has shown a reliable flow in FDI influxes in spite of its economic slowdown and marked legal reforms in current years. Are there available lessons for Ghana from the advantages (and shortcomings) of the Chinese Foreign Investment Regulation? Of course, Yes, Ghana can definitely learn from China's "national investment policy-making," though the benefits derived from this comparative study can be mutual.

Subjects: International Law - Law; International Trade & Economic Law; Politics & International Relations; International Law

Keywords: investments; Foreign investment laws; policies

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The information in the current perspective article is useful for global entrepreneurship for research purposes and also serve as a guide to other foreign investors who want to invest in Ghana and China. Ghana is gifted with a lot of natural resources such as gold, diamond, oil, etc. China in recent years has become one of the most important host countries worldwide and the most important one among developing countries. This article is original not only in approach, but also because it uses the specific case of China and Ghana to add new perspectives, insights and value to the existing discourse on international investment law. The findings of the research may have a practical implication to other developing countries and the study may be replicated in another African country.

PUBLIC INTEREST STATEMENT

Foreign Investment is a powerful force for economic growth and development throughout the world. Although economic forces are the vital drivers of foreign investment, they are not the single influential factors. Foreign investment laws (FIL) differ from country to country and for that purpose, aspects of FIL between China and Ghana were reviewed.

FIL classifies the investors and the investments the country wishes to attract; from the investor's viewpoint, it identifies the way in which the investment might be organized in order to profit from the agreements' protection. Investing abroad offers numerous benefits that would not essentially accrue from local investment, such as huge returns and also increased protections. For example, transferring production to a foreign country may allow a company closer and easier access the local markets of that country, and to cut expenses by taking advantage of lesser labor costs, favourable tax rates, and less rigorous regulations.

1. Introduction

Laws determine whether and how investments may be made in a specific country, the nature of the respective privileges of the non-national or foreign investors and the host country's government. FIL is one of the fastest-growing areas in international law. Almost unavoidably, FIL therefore is coined more by the dispute settlement activities of arbitral tribunals which entertain claims between foreign investors and host states brought under investment treaties rather than by diplomatic exchange, intergovernmental negotiation, and inter-state treaty-making (Rudolf & Christoph, 2008). Similarly, foreign investment law (FIL) transpires and develops more in view of arbitral precedent and case law than on the basis of traditional textual approaches to treaty interpretation (Stephan, 2008). Foreign Investment is a powerful force for economic growth and development throughout the world.

Although economic forces are the vital drivers of foreign investment, they are not the single factors of influence. FIL differ from country to country which is evident from the different levels of development in many countries especially in Africa. Foreign Direct Investment (FDI) has contributed significantly to growth and development in many developing countries over the past three decades, though, the benefits have not been evenly distributed. The countries that have benefited most includes China, Brazil, Malaysia, Republic of Korea, etc. (UNCTAD, 2011). However, several developing countries including Ghana have not seen FDI's contribution to growth and development (Turkson, Gyeke-Dako, & Amissah, 2015). The policy environment for cross-border investment is subject to constant change. At the national level, governments continue to adopt investment policy measures that influence the overall business environment for investors. At the international level, new investment agreements have been concluded at a rate of more than one per week for the past few years (UNCTAD-IPFSD, 2015).

China is considered as an example of a disadvantaged country that has propelled to be a global economic power among the developed nations. Over the last three decades, the Eastern Asia country has become a focus for overseas development for multinational enterprises. By disparity, the coastal African country of Ghana is considered as a destination for foreign business expansion (Briscoe, 2013). Both countries share similar features in history. With seven years' difference in their formative revolutionary period, both countries adopted isolative economy as well as nationalism policies, but later liberalized such policies in order to attract foreign investment to strengthen their respective economies. For example, China was globally recognized for its civilization especially in the arts and sciences for centuries. However, this civilization was brought to a standstill in the 19th and early 20th centuries due to civil unrest, military defeats, major famines, and foreign occupation. In the quest to gain China's sovereignty, the communist under the leadership of MAO Zedong established an autocratic socialist governance by imposing strict controls over daily life's activities which affected the lives of tens of millions of people. After 1978, the successors of MAO under the leadership of Deng Xiaoping focused on market-oriented economic development which enhanced positive economic impact by 2000. The living standard of the masses have improved, though political control has limited the room for personal choices. Since the early 1990s, China has increased its global outreach and participation in international organizations (Angela, 2016).

Similarly, ancient Ghana controlled the gold trade mining areas to the south and the Saharan trade routes to the north. It was one of the greatest Sudanic states, which dominate African history. It flourished until the eleventh century AD. Much was expected and hoped for from Ghana at independence, but like all new countries during the Cold War, Ghana faced immense challenges. In 1964, faced with growing resentment and afraid of internal opposition, Nkrumah pushed a constitutional amendment that made Ghana a one-party state and himself the life president. Ghana's first President, Kwame Nkrumah, was ousted nine years after independence while he was in China for diplomatic relationship, and for the next twenty-five years, Ghana was typically governed by military rulers, with varying unfavorable economic impacts. Notable among the economic hardship is the 1983 famine. The country returned to stable democratic rule in 1992 and has built a reputation as a stable, liberal economy continuing to develop Ghana's economy and international reputation

especially in the 2000s. Ghana has since increased its global reputation in democracy and foreign investment policies (Angela, 2016).

Notwithstanding the similarities in their beginnings, China appeared as a success story, while Ghana eventually declined. On the bases of ease of doing business in measuring the regulatory quality and efficiency, the World Bank flagship report for 2015 ranked China 86th and Ghana 114th. This positioning puts the FIL of China and Ghana under examination for developmental comparison. This paper highlights Ghana's Investment Promotion Center Act of 2013 and compare it against Chinese foreign investment policies. It will compare the investment laws and policies of Ghana and China in light of current international and FIL and make suggestions to both countries especially Ghana. A brief description of Chinese and African traditional conceptions of investment relations and China-Ghana relation in order to set the stage for a more detailed discussion of the evolution, doctrinal foundation, and contents of the existing investment policy and law of Ghana and China. This article is original not only in approach, but also because it uses the specific case of China and Ghana to add new insights, perspectives and value to existing discourse on international investment law. The findings of the research may have a practical implication to other developing countries and the study may be replicated in another African country since China has become one of the most important host countries worldwide and the most important one among developing countries. This article is useful for global entrepreneurship for research purposes and also serve as a guide to other foreign investors who want to invest in Ghana since Ghana is endowed with a lot of natural resources such as gold, diamond, etc.

1.1. Methodology of the study

In order to expansively analyze the differences and similarities of FIL's between the Republic of Ghana and that of the People's Republic of China, this study espouses a comparative analysis as a research methodology with the aim of identifying the unique and distinctive features peculiar to the two countries regarding the FIL's of both countries. The data obtained from the two countries were qualitatively analyzed in an objective manner so as to outline the differences and similarities in the FIL's. As noted by (Burnham et al., 2004, cited in Morris, 2009), qualitative analysis generates a wide range of data from different sources and enables a comprehensive detailed analysis of a phenomenon. It offers a detailed and in-depth explanation to the subject under investigation in a more comprehensive manner. The study did not make use of any primary source of data but however, it thoroughly reviewed literature and secondary data on the FIL's of the two countries. A thorough review and analyses of secondary data on the FIL's, went a long way in helping to comparatively and objectively outline and analyzed the difference and similarities in the two countries as far as growth and development of both countries is concerned.

1.1.1. Overview of investment

Investor and investment are among the key elements in determining the scope of application of rights and obligations under international investment agreements laws. Investment policies are not made in vacuum, they are made in political and economic context buffeted in recent years by series of crises in the areas of finance, food security and the environment, with persistent global imbalances and social challenges, especially with regard to poverty alleviation at the global and regional levels (UNCTAD-IPFSD, 2015). These crises and challenges have major impact on how regulations and policies are structured at the international level. The economic and financial crisis has drawn attention to a longer-term shift in economic issues from developed countries to emerging and developing markets (UNCTAD-IPFSD, 2015). The commitment to negotiate and implement bilateral investment agreements designed to promote and protect investment, shows the increased importance assigned various BITs. In relation to China's investment in Africa, these commitments continue at a much higher rate and such investments are supposed to be protected by law, specifically by national and bilateral investment treaties (UNCTAD-IPFSD, 2015) though a stronger role of the country also manifests itself to other sustainability issues. Investment laws and policies are characterized by recognition of the role of investment as a primary driver of economic growth and development and the consequent realisation that investment policies are a central part of development

strategies. It also serves a desire to pursue sustainable development through responsible investment, placing social and environmental goals on the same footing as economic growth and development objectives. Furthermore, it is a shared recognition of the need to improve the effectiveness of policies to promote and facilitate investment. These three broad aspects of new generation investment policies translate into specific investment policy challenges at the national and international levels (Davis & Melody, 2016). New social and environmental regulations are being introduced or existing rules reinforced all of which has implications for investment

1.1.2. Concept of foreign direct investment

There is no single definition of what constitutes foreign investment. According to Juillard and Carreau, the absence of a common legal definition is due to the fact that the meaning of the term investment varies according to the objective and purpose of different investment instruments it contains (Juillard & Carreau, 2007). Foreign investment activities could widely be defined on varieties of factors including; green-field investment, mergers and acquisitions, provision of long-term financing to subsidiaries, obtaining a license to explore natural resources or operate/construct infrastructure projects, acquisition of real property, controlling or holding an interest in a domestic entity, and offshore transactions which result in actual control of a domestic company being transferred to a foreign investor (Juillard & Carreau, 2007).

The concept of foreign investment involves the international movement of capital from one geographical area to another (Sornarajah, 2010). Foreign investment denotes that foreigners have an active role in management as a part of their investment. FDI and Foreign Portfolio Investment (FPI) are the two major forms of foreign investment. FDI is when there is a transmission of a perceptible and imperceptible asset from a business entity which has bulk of its shares directly and indirectly in the custody of another business entity of foreign nationality into the host country with full or fractional control of the owner of the asset. This is normally done with the intention of creating wealth in the host country (Södersten, 2004). FDIs occur when a company invests in a business other than its domicile country. For a private foreign investment to be considered as an FDI, the investing company must have at least 10% of shares in the foreign company (Nelson, 2016). Thus the parent company is the investing company while the foreign company is the subsidiary company. FPI is investing in financial assets, such as stocks or bonds, in a foreign country. FPIs occur when foreign investments are made by a company and it does not provide the investor with direct ownership of financial assets and is relatively liquid depending on the volatility of the market. Whereas an FDI allows the investing company to own shares of the subsidiary company, an FPI may be more temporary (Nelson, 2016).

1.1.3. Influence of FDI on developing host countries

FDI, by itself, has the potential to drive an economy like an overcharged engine. The economies of Singapore and Hong Kong are composed largely of FDI (UNCTAD, 2011). FDI inflows can directly benefit the economy of a host country. For one, FDI brings the surplus of wealth of advanced countries into developing ones. Some scholars even argue that FDI is a much more effective means of achieving economic development than more generally used methods, such as foreign aid and International Monetary Fund loans (Moyo, 2009). Economic development is achieved through FDI by the increased capital flows into countries with limited domestic financial sources (Hunter, 2003). The increased amount of capital also brings more jobs into the domestic economy, places more money in circulation (allowing for the accrual and formation of capital by local parties), and leads to regional development (Moyo, 2009). Additionally, with a significant amount of FDI being focused toward either exporting products manufactured in the host country, or producing products for the consumption of the host country (that would otherwise be imported), FDI inflows reduce trade deficits in the host country by either increasing exports or reducing imports (Hunter, 2003). Aside from the direct impact on the economy, FDI proponents also highlight the potential for “spillover” effects on the host country. The most noteworthy and recognized of these spillovers includes the diffusion of competitive technology and information to lesser-developed countries (Briscoe, 2013). Naturally, when a multinational corporation (MNC) or other business entity enters into a foreign market, it will

bring its proprietary technology and processes that it uses to maintain a competitive advantage (Blomstrom, Kokko, & Zejan, 2000). This includes management, organizational, and marketing expertise. Domestic partners (and employees) can learn from the foreign enterprise's capabilities, technology, management expertise, and industry insights (Conklin, 1997). This diffusion process starts with the introduction of new hardware or processes—and the skills necessary to operate the hardware or conduct those processes—to the host country. Prospective adopters in the host country come into contact with the information, innovation about it is diffused, uncertainty about it is narrowed, and, ultimately, the probability of adoption is amplified (Blomstrom et al., 2000). The adoption process can consist of duplicating the innovation and hiring workers already trained by the foreign entity. Additionally, the adoption of technology forces the multinational enterprise (MNE) to create more innovations to compete with duplicated processes and technology and also puts internal pressure on host-country domestic enterprises to compete with the new innovations. FDI can increase the training of a host country's workforce in the same manner that it can bring innovation to a host country. Because education is typically lacking in developing countries, the training brought by MNEs is crucial. MNCs provide much more worker training than do host country domestic businesses. Management expertise, in particular, is improved in the FDI host country. A training diffusion occurs when MNEs train managers, who later move to other firms and dissipate their acquired management expertise (Blomstrom et al., 2000).

1.1.4. *The FDI environment and policy*

The FDI environment has been understood by several authors to include the economic conditions, social conditions (for instance, labor policy conditions), infrastructure, political climate (including risks involved with hostile or unbalanced regimes), and FDI policy (Thunell, 1977). Without FDI policy and political risk, a country can have a striking environment for FDI by having cheap labor, access to natural resources and yields that are greater than what can be achieved elsewhere. With respect to building an attractive FDI policy administration, the requirements can be more extensive (Briscoe, 2013). In general, attractive FDI policy enforces few restrictions, offers for national treatment or better than national treatment of foreign enterprises, is supported by sound commercial law, a fair tax code, has translucent customs regulations and includes an agency that simplifies, rather than delays, investment. The legal rights of foreign enterprises must be “effectively balanced and also protected” and must “warranty fairness in judgement” (Briscoe, 2013). Incentives that make the FDI climate striking can be separated into three categories: ‘fiscal incentives, financial incentives, and other incentives’ (Briscoe, 2013). Fiscal incentives are those that reduce tax expenditures (Cohen, 2007). These include reductions in the corporate tax rate, tax holidays (deferrals on taxes for a number of years), accelerated depreciation allowances, tax credits for profit that is ploughed in the host country, and exemptions from export or import duties and value-added taxes. Financial incentives are typically direct grants of money, such as subsidies for construction, training, land, labor, or low-interest loans. Other incentives do not deal straight with finances, but make access into the host country calmer- infrastructure development (Briscoe, 2013).

1.1.5. *China-Africa investment relations*

For almost half a century, China has been active in Africa. Hundreds of major Chinese businesses and tens of thousands of Chinese labourers, retailers and tourists are found in all parts of the African continent. The presence of Chinese businesses and people in Africa has social, economic and political implications for both China and Africa developmental relationships. China is now a major source of foreign investments in Africa investing huge sum of funds in the economy of African countries, which has resulted China as an integral part of a global, capitalist economic system. Strong China-Africa relations will not only boost China's progress toward becoming a leading force in global affairs but also it could contribute significantly towards the re-definition of Africa's place in the international political economy (Baah, Otoo, and Ampratwurm, 2009). China and Africa share similar philosophical viewpoints, not only regarding the function of property, but also concerning negotiated investment treaties with the wealthier Northern partners from the viewpoint of maintaining the broadest possible regulatory authority for decades (Kidane & Zhu, 2014). It is with this important note that China's attempt to use laws to order its investment relations with Africa must be discussed

from different global perspectives (Kidane & Zhu, 2014). It is important to note that, similar to the legal culture systems of China, legal culture systems in African emphasizes harmony rather than the strict enforcement of laws and policies with the purpose to reconcile the investment parties and to restore harmonious relations within the investment community (David & Brierley, 1978; Philip, 2001). Though it has emerged as the largest economy in the world, millions of China's people still live in poverty as the state struggles to raise their standard of living and to find resources to develop its backward provinces especially in the West (position paper, 2015). China's developing status explains what has been called the "three faces" of China in Africa: the presence of the Chinese state, private multinational companies, and individual adventurers in Africa looking for economic opportunities (position paper, 2015).

1.1.6. *China-Ghana investment relations*

China and Ghana faces extraordinary challenges in ordering their economic relations particularly in regards to their investment relations by law. China's investors have contributed significantly to the growing foreign investment in Ghana. China's presence in Ghana dates back to 1960 after Ghana gained republic status as an independent state. China and Ghana have since maintained diplomatic ties and have exchanged high level official visits. In recent times the relationship has been strengthened further with Chinese financial assistance in helping Ghana build economic infrastructure across the country. China is ranked among the leading countries with foreign direct investments in Ghana (Baah et al., 2009). The trend in most African countries point to the urgent need to develop coherent continental approaches to Chinese companies and foreign investment in general. In line with the general trend, Chinese investments in Ghana have increased tremendously over the last few years particularly after 2000 (Baah et al., 2009). China's economic growth over the last two decades has been nothing short of spectacular, and it now has the largest middle class population in the world (Keith, 2014). China is considered as both a developed and a developing country. According to Frimpong (2012) cooperation agreements between China and Ghana cover a wide range of areas. Firstly, in the area of diplomatic cooperation, the two countries have agreed to support each other in issues concerning sovereignty and territorial integrity. The most important facet of this agreement is Ghana's continued adherence to the One China Policy which sees Taiwan as an inalienable part of People's Republic of China. In the area of economic cooperation, China has agreed to cooperate with Ghana in the areas of agriculture, investment, trade and infrastructure. Over the years, China has become an important source of Ghana's imports. The rising share of Ghana's imports from China and the more diversified imports relative to falling market share of other countries can be traced partly to the competitiveness of China's imports compared to other traditional sources of Ghana's imports. Part of the causes of Ghana's looking increasingly to China was the Structural Adjustment Program that not only encouraged increased liberalization of imports but created an austerity environment that made importers look towards cheaper sources. In the context of explaining China-Ghana trade, the commodity composition of trade clearly suggests that resource endowment explain much of the trade in primary commodities while competitive advantage explain most of the manufactured goods. In other words, because China has productivity advantage in manufactured goods it exports more of these goods to Ghana, whereas Ghana is endowed with huge primary resources and thus exports more primary goods to China (Frimpong, 2012).

2. Comparison of the concept of FIL's of Ghana-China

FIL conforms to international norms and is based on a framework of legislation relating to business activities, copyrights, patents, trademarks, disputes and labour relations. Ghana and China subscribes to a number of international conventions on industrial and intellectual property with respect to foreign investments hence understanding government policies and regulations is critical to the success of both the Ghanaian and Chinese investment market.

This section will comprise right of investment establishment and host country's legislation on foreign investors and investment.

2.1. The right of establishment

The investment regulations and policies of either country has processes to establish investors-foreign and local before final license is approved by the regulatory authorities. Investors intending to do business in Ghana first have to register as business entities (i.e. Limited Liability Company, partnership or sole proprietorship) with the Registrar-General's Department under the relevant laws. Enterprises with any foreign participation (i.e. wholly foreign-owned enterprises or joint ventures) must then register with Ghana Investment Promotion Centre (GIPC) indicating the amount of foreign capital invested. Under the GIPC Act, minimum capital required for foreign investors who participate in enterprises is USD 200,000 while Wholly Foreign-Owned Enterprises (WFOE) must have a paid-up capital equivalent to USD 500,000 (Ghana Investment Promotion Centre [GIPC], 2017). A foreign investor is required to satisfy the minimum equity capital requirements; either in cash or its equivalent in goods, plant and machinery, vehicles or other tangible assets imported to establish the enterprise (Investment Policy Review Ghana, 2003). Registration with Ghana Revenue Authority for purposes of determining the statutory tax (e.g. taxes, rebates, and exemptions thereof) and Environmental Impact Assessment Certificate from the Environmental Protection Agency (EPA) are required as part of the registration and licensing approval, and all stages of the registration has applicable fees at the cost of the investor (GIPC, 2017). Depending on the sector under which the business is registered, the investor(s) may have to register with the association of the sector and also gain certificate to commerce or operate business from the municipal district assembly.

Foreign invested business registration in China involves the Commission of Commerce, the Administrative Bureau for Industry and Commerce, the State Administration of Foreign Exchange, the Tax Bureau, the Customs Office and the Statistics Bureau, which are government representatives. Three stages are involved in the process for licensing-Licensing stage, post licensing stage and post capital injection stage (China Market Entry Handbook-The Sovereign Group, 2015). China is noted for its bureaucracy and the process of business registration is not immune to this inclination for regulation. Unlike Ghana and many other countries, registering a business in China may require the assistance of an agency authorized by the government to assist with the process (China Market Entry Handbook-The Sovereign Group, 2015). With the introduction of China's amended company laws both minimum capital requirements and the prescribed investment schedule have been abolished in favour of a subscribed capital system for companies that are not engaged in business activities and requires special approvals. The amount of registered capital is declared during the licensing phase of the registration and total investment amount is represented by the ratio between foreign-contributed capital and debt. However, local authorities in local bureaus may in practice still require foreign investors to commit to a minimum amount, which is dependent upon the business scope, volume of sales, company size and location of setup on a case-by-case basis by the local authorities (China Market Entry Handbook-The Sovereign Group, 2015).

2.2. Tax

From a broad-spectrum, tax competition which remains essential aspect in investing host countries are generally identical (Reuven & Martin, 2002). Advantages from Tax can result in huge profits in reserves emanating from operations abroad. For instance, a manufacturing firm functioning in a lower-income nation is sure to incur additional three percent increase in production for every one percent that a tax plan decreases the cost of capital (Mutti, 2003). Some famous types of FDI tax incentives comprises reduction in corporate tax rates, accelerated depreciation allowances, exemptions from export duty or value-added taxes, tax holiday and tax credit for profit that is re-invested in the host country. Tax incentive can be described as a deliberate exemption or concession from a tax liability. Foreign companies that engage in business operations in China are required to pay taxes according to the local tax codes. The most important tax categories for these forms of businesses are Corporate Income Tax (CIT) and Business Tax (China Market Entry Handbook-The Sovereign Group, 2015). In 2008 China made paying taxes easier and less costly for companies by unifying the criteria and accounting methods for tax deductions and by reducing the corporate income tax rate. Again in 2009 a new corporate income tax law unified the tax regimes for domestic and foreign enterprises and clarified the calculation of taxable income for corporate income tax purposes. When

a business license is issued, the investor must register with the relevant tax authorities within 30 days. This includes registration with both the national taxation bureau and its municipal branch. The application process generally, takes ten working days.

Many foreign companies, registered before March 2007, enjoyed preferential CIT treatment if they were located in special economic zones or if they were involved in production-oriented businesses. Following implementation of a new income tax law from January 2008, the preferential tax rates were phased out rising to the standard CIT rate of 25% by 2012 (Zimmerman, 2010). Some tax incentives remain for certain industries and projects that are being encouraged by the government. But interestingly, China now reserves all these incentives for only FIEs that operate in highly technology. Such include advanced new technology, small scale enterprise with low profitability, non-resident enterprises. Other incentives given to foreign investors in China are factual incentives, location based tax exemptions, activity based incentives and other tax types incentives (Zimmerman, 2010).

Ghana operates on a unitary tax system, in which income from all sources (except for income such as dividends, rent, capital gains, and some fees subject to final withholding taxes or lower tax rates) is aggregated and subject to income tax (Pricewaterhousecoopers, 2014). Following the passage of the Income Tax Act, 2015 (Act 896) (ITA, 2015) in September 2015, investment returns and the criteria for determining the taxability in Ghana is dependent if the investment is considered an income sourced in Ghana (Kwatia, 2016). Similar to that of China tax incentive in Ghana include tax holiday, location incentive, corporate tax rates incentive, capital allowance, carry forward tax and other trade related incentive (Research Report, 2014). The Revenue Administration Act (Act 915) was passed and took effect on January 1, 2017. The act consolidates and regulates all tax administration provisions, including tax collection, filing requirements and penalties. The standard corporate tax rate is 25% on profits. Mining and petroleum exploration companies are subject to a tax rate of 35% and hotels 22%. Various tax and non-tax incentives are offered to investors in accordance with the industry they are in and the location of their business. The incentives are mainly in the form of reduced corporate tax rates on certain types of income companies operating in sectors such as agro-processing, rural banking and waste processing are subject to a reduced corporate income tax rate of 1% during the period of their temporary concession (Oxford business group, 2017). It is important to state that the reform of the tax system in Ghana especially in the natural resource sector will help the government and people to raise the revenue necessary for development.

From the forth going tax laws of both countries, there exist some similarities regarding the application of the tax laws and incentives. However, tax rate and regulations in the two countries are among the most problematic factors in doing business. While in Ghana tax rate is the third most problematic factor in doing business with tax regulations as the sixth factor, tax rate and regulations are the fifth and sixth problematic factors in doing business in China.

2.3. Labour

The Labour Act 651 of 2003 regulates employment and labour related issues in Ghana. This Act consolidates all laws relating to labour, employers, trade unions and industrial relations. The National Labour Commission (NLC) is the administrative body responsible for the administration of the Labour Act and the settlement of disputes. The commission employs negotiation, mediation and voluntary or compulsory arbitration in the exercise of its mandate (Oxford Business Group, 2014). Ghana's labour law regulates three categories of workers: permanent, casual and temporary. The law makes it mandatory that a person who is employed for a period exceeding six months—either at a stretch or a cumulative number of days within a year—is deemed to be permanently employed, and an employer is therefore required to secure the terms and conditions by means of a contract. A person engaged on a seasonal or intermittent basis for a period of less than six months is categorized as a seasonal worker. A temporary worker on the other hand is a person who is employed continuously for a minimum of one month, but is neither a permanent nor seasonal worker. No formal contract is required in respect to temporary or casual workers and remuneration is calculated on a daily basis (Oxford Business Group, 2014). Ghana's labour regulations and practices are in some cases

restrictive compared with practices applied internationally in countries hosting similar investments (UNCTAD, Investment Policy Review Ghana, 2013). Labor regulations and policies are generally favourable to business mostly beneficial to foreign enterprises (UNCTAD, Investment Policy Review Ghana, 2013). The Laws and regulations of Ghana set a minimum wage by which labour should be paid which is considered to be low by many. Aspects of the labour legislation are in need of review especially the cost of severance pay which is in most cases higher than international norms. This adds up as extra costs to investors, and can stifle the development of labour-intensive export production (International Labour Office, 2000). Labour-rights provisions are generally negotiated under firm specific collective bargaining agreements that can involve a lengthy and difficult process. An investor who invests under the GIPC Act of 1994 is entitled to an automatic immigration quota depending on the size of the investment.

China on the hand had in recent enacted part of its labour laws due to the rise of migrant labour, thus the Labour Contract Law and the Labour Disputes Conciliation and Arbitration Law of 2008 (Baah et al., 2009). The new Labour Contract Law mandates every employee should have a contract which stipulates all the workers' rights and entitlement, failure of which will compel the employer to pay twice the compensation to the workers. The minimum wage rate in China differs per cities. The wage difference between migrant and traditional state workers is significant, without counting benefits. A migrant worker may earn US\$ 115 a month compared with an urban worker whose average monthly wage may be US\$ 295 (Baah et al., 2009). In other words, a migrant worker would have to get a 156% increase to match the wage of a worker in a state-owned company even if they are doing similar work. In addition, migrants are not entitled to benefits such as maternity or unemployment benefits and are excluded from many social security measures such as social assistance. (Baah et al., 2009) The applicable laws and regulations provide no legal basis for the employer and the foreign national employee to agree that foreign law governs a labour relationship in China. Salary paid to foreign nationals must not be lower than the local minimum wage (McKenzie, 2015). Work time, rest and leave, labour protections and social insurance applicable to foreign nationals must comply with relevant national labour regulations. In terms of international regulations, China has ratified 25 pieces of International Labour Organisation (ILO) conventions. According to a submission by the International Trade Unions Confederation (ITUC) to the ILO, it stated that much work needs to be done on the labour laws of China (Baah et al., 2009).

As compared to China where the minimum wage differs per city and the number of hours worked, the minimum wage in Ghana is mostly, determined by the nature or sector of job and qualification. Again, labour in Ghana is cheap and the laws less restrictive as compared to China. In China, labor union aligns itself with the employer and the Chinese Communist Party, so it functions the opposite way compared to its counterparts in the western world. Ghanaian labor law mimics the British system. Therefore, some disparities in standard including overtime, wages, labor contracts and worker welfares (Ku, 2012). Again, labour right abuses in China and among Chinese firms is very high with numerous complaints leading to increased focus on the labour relations dimensions of China by ILO and international right advocate societies.

Labor is also considerably cheaper in Ghana, where a manufacturer can compensate workers with as little as \$1.65 a day (Bureau of Democracy, Human Rights, & Labor, 2008), while the average Chinese worker will make \$1.36 in just an hour. (International Labor Comparisons, 2012). The Ghanaian workforce has also proved to be just as capable as the Chinese workforce in that regard the foreign labour laws must be of a concern to policy makers in Ghana.

2.4. Environment

Although Ghana has the policies, laws and institutions needed to adequately protect its environment, extreme water pollution, growing deforestation and soil degradation indicate the need for further action—according to a comprehensive review of environmental management in Ghana carried out by the Ministry of Environment (UNCTAD-IPRG, 2003). Ghana has enacted effective laws and regulations to protect the environment. It is obligatory for foreign investors to obtain Environmental

Impact Assessment Certificate during the registration to acquire an environmental permit from the Environmental Protection Agency (EPA). The presence of extreme water pollution, soil degradation and growing deforestation by foreign investors shows the necessity for Ghana to update the environmental legislation passed in 1994 and also firming the organisational role of Environmental Protection Agency to facilitate environmental impact assessment (UNCTAD-IPRG, 2003). Recent among the environmental hazard is the activities of illegal mining-galamsey.

In China, most established foreign enterprises require certification from China's Environmental Protection Agency (EPA) before beginning its operations. China has done a lot in the past to protect its environment and has enacted environmental laws and regulations in the past and still does. According to the five-year plan of Industrial Promotion delivered by the National Development and Reform Commission (NDRC) in 2012, China pledges to stringently limit Foreign Direct Investment (FDI) in specific areas including environmentally destructive industries and energy and resource-intensive. This plan is laudable as it will help curb the pollution situation in China and encourage more skilled foreign talents to work in China, hence reducing the labour cost on foreign companies.

China is burdened with the problems of non-compliance, weak and also slow enforcement of environmental laws (van Rooij, 2006). This has resulted in a series of environmental problems in China including water pollution. The State council of China came out with bold plans to ameliorate the water conditions in China. The Plan establishes specific water quality targets for 2020 and 2030, with an ultimate goal of achieving comprehensive improvement by 2050. The Plan also calls for the reduction of the prevalence of black and odorous water bodies in prefecture-level cities to less than 10% by 2020, and the elimination of this problem by 2030. According to the 2012 UN-Water resources report on Ghana, seven percent of the total water withdrawal is withdrawn by industries. As the country is a major gold producer, mining is a predominant activity. This extractive industry (including mining for other minerals) uses large volumes of water for its operations and discharges its effluents into the rivers. Monitoring of the major registered mining companies by the Ghana Environmental Protection Agency indicates that generally there is compliance to the set specifications with regards to pollution. Environmental degradation and pollution in China also pose challenges well beyond those to the natural environment. China's forest resources also rank among the lowest in the world. Demand for furniture, chopsticks, and paper has driven an increasingly profitable but environmentally devastating illegal logging trade (Elizabeth, 2003). While in Ghana, the forest is more preserve with the legislation of planting a tree before cutting.

In summary, China's environmental bureaucracy is generally weak, and funding and personnel levels remain well below the level necessary merely to keep the situation from deteriorating further. Without greater support from Beijing, the regulatory and enforcement regimes also remain insufficient to support implementation of the best policies or technological fixes.

Ghana's current institutional arrangements for the management of resources and the environment emphasize participatory planning involving local communities and institutions, non-governmental organizations, and decentralized sectoral organizations. Technical implementation is undertaken by the technical departments. The Environmental Protection Agency provides coordinating and monitoring functions, which is a desirable departure from the sectoral segmented approaches in the past. Also lot of education to increase awareness of the nature of the resource and environmental problems has been undertaken with favourable indications that the new philosophy and approach will succeed in minimizing the problems (Benneh, Morgan, & Uitto, 1996).

2.5. Treatment of FDI

According to OECD (2004), National treatment in its simplest form can be defined as a very important principle in international law which is very significant to numerous treaty regimes. Under national treatment, if a state offers a particular right, benefit or honor to its own citizens, it must also offer those same benefits, rights and privileges to the citizens of other states while they reside or continue to operate in the host country. In the perspective of international treaties, the national

treatment principle beseeches a state to provide equal treatment to the citizens of other nationals. National treatment principle entreats host countries to treat investors no less well than it treats its local investors. In that regard, a national treatment clause seeks to ensure the protection of foreign investors from certain measures taken by host countries with the intention of protecting domestic companies in order to give them a competitive advantage over their foreign counterparts. This standard of protection covers regulatory techniques that have a direct intention of expressing any form of discrimination as well as measures that are indirectly biased or biased in their effect. The national treatment principle expects host countries to ensure that foreign investors also enjoy newly introduced favourable measures just as local investors and also if the host countries treatment of its domestic investors become worse, the host country is committed to such lower standards. Under a national treatment provision, host countries frequently pledge to give investors of the other contracting party opportunity that is no less satisfactory than that given to investment from their own local citizens (Muchlinski, 2009). Mostly, the main aim of the national treatment clause is to eradicate any bias touching non-nationals or foreign investors in approval of local investors and their investments. In a broader context, this principle is generally viewed as an attractive and good principle aimed at ensuring equal treatment among locals and foreigners, but on the contrary, it conversely means that a state has the right to deprive foreigners of any privileged or right of which it deprives its own citizens (Muchlinski, 2009).

Ghana's Investment Act does not make any specific reference to standards of treatment, although the track record of investor treatment in Ghana has been non-discriminatory, with investment treaties also providing additional guarantees on treatment standards. The GIPC Act provides guarantees including prohibition against discrimination and expropriation to all enterprises. The GIPC Act reflects this, guaranteeing that a foreign-owned enterprise shall not be subject to expropriation or nationalisation unless appropriation is in the national interest and for a public purpose. In case of expropriation, compensation is overseen under the Act on the basis of a "fair and adequate" valuation of the property. The Act also provides that compensation shall be paid in convertible currency and without undue delay. This is in line with the trend in recent BITs (OECD (2004). Ghana's model bilateral investment treaty provisions on treatment standards indicates that investments of nationals and companies involved in the contract be accorded equitable treatment and shall enjoy full and adequate protection and security in the territory of the other contracting party (Ministry of Foreign Affairs, Ghana, 2001) Also the protection act spells that neither contracting party shall, in any way, impair by unreasonable or discriminatory measures, the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other contracting party. Ghana's constitution prohibits the compulsory taking of private property without compensation.

In BITs, with regards to China, the Chinese government promised that foreign investment can be accepted and protected according to Chinese laws, and can receive fair and equitable treatment, most favored nation (MFN) treatment and/or national treatment. Therefore, when a foreign investor's request is rejected illegally by Chinese investment authorities (Ministry of Commerce), or the case involving foreign investment is procedurally unfair or materially unfair in Chinese judicial system, the foreign investor can claim for compensation under BITs (Chinese Practice of Foreign Investment Protection, 2012). Again, the expropriation or nationalisation of foreign investment for the purpose of public interest is carried out in accordance with legal procedure and that foreign investors gain reasonable, prompt and adequate compensation (Chinese Practice of Foreign Investment Protection, 2012). Under the current regime, FIEs require governmental approval, however, with the introduction of the Draft Foreign Investment Law, foreign investors will no longer be subject to a separate regulatory regime from domestic investors, but be given the same treatment instead. Therefore, the adoption of the pre-establishment national treatment principle for foreign investment ensures that there is no need for foreign investors to apply for approval unless the investment falls within the harmful catalogue list (Dang, Chang, & Path to reform for foreign investment regulation in China, & how that will boost the services sector, 2016). OECD describes China's progress in developing a regulatory framework to attract and promote investment over the past three decades as impressive though challenges remain since policies to encourage FDI have been

highly successful. FDI procedures have been simplified since a MOFCOM circular eliminating the need for examination and approval of the establishment of a branch which is not subject to any special requirement (Shang, 2011). Among the challenges is the increasing concern expressed by foreign investors over perceptions that government policies are discriminating against foreign-invested enterprises (Davies, 2013).

3. Most Favoured nation (MFN)

The most-favoured-nation standard guarantees that investors and investments of a binding party to a BIT obtain the superlative management that the contracting parties to the BIT have approved to investors and investments of third countries (UNCTD BIT U. N. Conference on Trade and Dev., Bilateral Investment Treaties 1995–2006, 2007). MFN treatment is defined by the draft articles on MFN as the treatment accorded to the beneficiary nation, or to persons or things in a determined relationship with that nation, not less favourable than treatment extended by the granting nation to a third nation or to persons or things in the same relationship with that third nation (Article 5 of the Draft Articles on MFN). MFN clause is considered as a treaty provision whereby a nation undertakes an obligation towards another nation to accord most-favoured treatment in an agreed sphere of relations (Article 4 of the Draft Articles on MFN).

In the context of investment, MFN treatment ensures that a host country extends to the covered foreign investor and its investments, as applicable, treatment that is no less favourable than that which it accords to foreign investors of any third country (UNCTAD Series on Issues in International Investment Agreements II, 2010). The purpose of this clause in MFN treatment in IIAs is meant to ensure there is equality of competitive conditions between foreign investors of different nationalities seeking to set up an investment or operating that investment in a host country. Foreign investors seek sufficient assurance that there will not be adverse discrimination which puts them at a competitive disadvantage. Such discrimination includes situations in which competitors from other foreign countries receive more favourable treatment (UNCTAD Series on Issues in International Investment Agreements II, 2010). The MFN standard thus helps to establish equality of competitive opportunities between investors from different foreign countries. It prevents competition between investors from being distorted by discrimination based on nationality considerations (UNCTAD Series on Issues in International Investment Agreements II, 2010). The MFN treatment clause is a treaty tool that follows very closely the objective and purpose of the IIA. The MFN treatment clause will play the role of ensuring equality of treatment and conditions between foreign investors, whether the IIA seeks to liberalize conditions to entry and operation of foreign investors and/or offers protection to investors and their investments without any commitment to make these conditions easier, more liberal or less restrictive.

The provisions of the basic treaty are usually of prominent essence in the act of discovering as to whether the benefits granted in a third-party treaty can be trusted or depended upon by an investor in the applicable BIT. This would involve a consideration of whether the subject-matter to which the MFN clause is applicable indeed accepted by the basic treaty and whether the clause would operate to stretch to the beneficiary more favourable treatment in a third-party treaty (UNCTAD Series on Issues in International Investment Agreements II, 2010). If the MFN provision in the basic treaty does not stretch to cover the subject-matter of the more favourable treatment accorded to investors of a third nation, then matter comes to an end (Radi, 2007).

In a broader sense, the main clause of MFN can be seen in the language clause and the *ejusdem generis* principle: The language relates to the fact that some MFN clauses involve or expressly do away with dispute settlement provisions within their scope while others are more general in their wordings, at best resulting in unclear and unpredictable as to dispute settlement, leaves considerable scope to argue competing interpretations (Radi, 2007). The *ejusdem generis* principle is another optional principle to the interpretation of treaty provisions and indeed, the MFN clause. Its relevance is to ensure that an MFN clause “confers only those rights which are within the limits of the subject matter of the clause”. By implication, it means that an MFN clause can only extend to matters that

can be read into the same division as the provisions to which the clause itself has a relation to in that regard (Radi, 2007).

MFN clause has been incorporated in China BITs since China concluded its first BIT with Sweden. China-Germany BIT thoughtfully states that

(N) either parties to a contract shall focus investments and activities associated with such investments by the investors of the other Contracting Party to treatment less favourable than that accorded to the investments and associated activities by the investors of any third State. (Ku, 2012)

Given the nonexistence of clearly specified dispute resolution mechanisms in some of China's first generation BITs and the limitation of scope which is applicable in such situation before ICSID arbitrations, the common practice of Maffezini approach in ICSID arbitration will be important for Chinese investors to keep their investments safe (Fan & Mphil, 2013).

Ghana offers assurances at the mutual or bilateral stage to safeguard investors and their related investments (Ghana Investment Promotion Centre Act (Act No. 865/2013), 2013). Beneath these mutual or bilateral systems, regime offers the power to the investor to take regime to arbitration in any of the designated and pre-accepted dispute settlement means. Additional defense beneath the BITs include, the national treatment, which may be explained as, to give similar handling to that given to nationals or citizens of the host country (Ghana Investment Promotion Centre Act (Act No. 865, sec. 30/2013), 2013). Most favoured nation handling, which is by mention refers to the principle of handling not less well than that given to locals and investments of third countries in same conditions, and handling which is just and impartial resulting from elementary doctrines of international law and also a mutual shared sense of justice (Ministry of Trade and Industry of the Republic of Ghana, 2012). For example, article 4 of the GIPC on NT and MFN states: (Ministry of Foreign Affairs, Ghana, 2001).

- (i) Neither Contracting Party shall in its territory subject investments or returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third state.
- (ii) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which is accorded to its own nationals or companies or to nationals or companies of any third State.

4. Fair and equitable treatment-FET (China-Ghana)

The fair and equitable treatment principle is an unequivocal standard of protection as far as international investment is concern. It applies to investments in specific situation without necessarily referring to how other investments or investors are treated by the host State. Thus, governments that host the investments of foreign investors are unable to refuse a claim under this standard by arguing that the treatment is not distinct from that encountered by their citizens or other non-national investors functioning in their economy (ONCTAD (2014)). With regards to usage in BITs, the traditional aim and intent inherent in FET clauses was to protect foreign investors and their investment against several situations of unfairness which is likely to manifest itself in the process of transacting their business, such as random revocation of licenses, pestering of an investor by way of imposing unjustified fines and penalties or creating other difficult barriers with the intention of disrupting a business of a foreign investor (ONCTAD (2014)). Here, the FET standard would make room for a gap-filling device, due to the reason that not all kinds of unjust administrative or governmental conduct could be incorporated under the added precise absence of or securing of asset principle as enclosed in BITs (Dolzer & Schreuer, 2008). Till current eras where there has been the need to give a precise and more

specific meaning of the FET principle, its denotation was not usually decided upon due to the fact that the word is ambiguous to define as meaning and interpretations could be assigned to it.

4.1. Ghana and China's commitment to the FET principle

Both Ghana and China have made significant commitment to ensuring that investors enjoy fair and equitable treatment as enshrined in the FET principle and acknowledged by international laws and conventions. With regards to fair and equitable treatment, Article 2(1) of China-Sweden BIT articulates states that, "Each Contracting State shall at all-time ensure fair and reasonable dealing to the investments by investors of the other Contracting State" and almost all of China's BITs follow this approach to give a clear definition to this treatment. However, there are some problems that arise as far as fair and equitable treatment is concerned: when it comes to the standard that shall be adopted in interpretation of this treatment. It may be subject to either the principles of international laws, national laws and regulations or customary international laws. Linking the equitable and fair dealings concept to the standard of international law eliminates the possibility of giving meaning to the provision using the semantic approach (Trends in Investment Rulemaking, United Nations, 2013). BIT between the countries of the Caribbean common market and Cuba for instance decided to use the national laws and regulation approach (Fan & Mphil, 2013). China adopts the plain fairness standard with respect to giving meaning to fair and equitable treatment, depending on the tribunal to delineate the inherent and intrinsic meaning when it comes to disputes arising out of fair and equitable treatment, the consequence of this, the unpredictability of the interpretation of fair and equitable treatment may present form of uncertainty as far as the outcome of the tribunal decisions is concerned. With the exceptions of few situations, most of China's BITs contain a FET clause. A notable difference exists; however, in that third generation of Chinese BITs subject the FET standard to customary international laws (China-Costa Rica BIT, 2007). Just like many BITs from other nations, the language of China's second-generation BITs generally referred to FET in accordance with international laws (James Crawford, 2013). This language in addition to a broad arbitration clause (any investment dispute) arguably exposed China to broad range of liability. This is due to the fact that the no explicit reference to international law presumably gives a broad scope of latitude to an arbitral tribunal to give meaning to the applicable FET standard without necessarily making reference general practice accepted as law (China-New Zealand FTA, 2008) This, coupled with other reasons, may have been among the factors resulting in a change with regards to China's recent investment treaties, in which the language historically used is substituted by clauses that makes provision for fair and equitable treatment in accordance with commonly accepted rules of international law (Sauvant & Nolan, 2015) or "in accordance with customary international law" which might leave little room for interpretation as the concept of "customary international law" commonly refers to "established state practice" (Schill, 2007).

Some of China's BITs guarantee to a large extent, fair and equitable principle as acknowledged by international laws and conventions. For instance, the principle of fair and equitable treatment can be seen in the preamble of china's BIT with the Netherlands in 2001 as well as with Belgium in 2005. To that extent, China ensures the full protection and security of partner countries as far as the principle of fair and equitable treatment is concerned. China's BIT with Ghana however has a slight difference as compared to that of the Netherlands and Belgium mentioned above. China's BIT with Ghana omits the word "fair" but promise to ensure and guarantee fair treatment of investors as far as the BIT between the host country and investors are concerned (Sahoo, 2012).

The Ghanaian Constitution ensures the protection of investors and their investments from deprivation (UNCTAD, Investment Policy Review Ghana, 2013). Specifically, the Ghana Investment Promotion Centre Act 2013 makes it clear that, there will be no obligatory acquisition of property which by insinuation embraces investment, excluding situation where such compulsory procurement is important for the public order, defense, health, morality, and advantageous to the country at large and more importantly, the laws states that obligatory attainment of property must be

escorted by fair, prompt, and satisfactory reimbursement as and when it becomes necessary as established by international laws and conventions (UNCTAD, Investment Policy Review Ghana, 2013).

Furthermore, beneath Ghana Investment Promotion Centre Act 2013 (Act 865), the Ghana Investment Promotion Centre is authorized to promote and encourage investments in the Ghanaian economy through the mediation of Bilateral Investment Treaties with fascinated countries and by doing so, it is to ensure that investors and their investment are protected to the best of its abilities (Ghana Investment Promotion Centre Act 2013 (Act 865)). The GIPC Act offer guarantees to foreign investors and their investment against expropriation. Related to the requirements in the Constitution, it is worth noting that expropriation is possible and necessary only when it is in the national interest of the country and must be escorted by fair and adequate reimbursement as the need arises. The aggrieved party or the investor has all the exact access to the judicial system for the purpose of the rational worth of the investment and the volume of reimbursement owed in the case of expropriation. Till date, Ghana has reached over twenty-one (21) BITS of which most of the contracts have been approved while others are still pending approval. Countries signed and approved include: The Peoples Republic of China, The Kingdom of Denmark, The Northern Ireland and The United Kingdom, Federal Republic of Germany, Republic of Malaysia, Swiss Confederation and The OPEC Fund (GIPC, 2016).

With expropriation clauses, the challenge is differentiating between the exercises of legitimate government regulation and indirect expropriation (Ofodile, 2013). Chinese law prohibits nationalization of non-nationals invested enterprises unless under “exceptional” conditions. Chinese representatives have said that these conditions include national security and hindrances to large civil engineering projects, but the law does not explain the term. Chinese law demand recompenses of expropriated non-national investments, but does not define the formula to be used in computing the amount (U.S. Department of State Investment Climate Statement, China, 2015). As it is known, most BITS internationally, not an iota of the expropriation provision in China-Africa BITS explain the terms “expropriation” or “nationalization” or propose any criteria for identifying what amounts to “measures having an effect equivalent” to expropriation or nationalization (Treaty Concerning the Encouragement and Reciprocal Protection of Investment, U.S.-Rwanda, 2011). Given the ambiguity of the expropriation clauses of the BITS studied, the risk of over extensive explanation of the idea of creeping or indirect expropriation is constantly present. The anxiety is that repetitive regulatory acts may be interpreted to end in indirect expropriation, (Feldman, 2002) and that the expropriation provisions, together with investor-state dispute settlement clauses, could permit international arbitrators to pass ruling on the valid scope of regulatory mistake in sensitive areas including water provision.

4.2. Free transfer of funds/capital

A foreign enterprise operating in Ghana and registered with the GIPC is guaranteed of Ghana’s investment laws, unrestricted transferability of its dividends and net profits after payment of tax to their home countries or countries of origin (Ghana Investment Promotion Centre Act (Act No. 865, sec. 30/2013), 2013). The laws also allow for the easy transferability of money for payments of loan servicing in the case of overseas loans and royalties and other fees in reverence to technology transmission transactions such as technical aid and administration agreements (Ghana Investment Promotion Centre Act, (Act No. 865, sec. 32(b)(c)/2013, 2013). Furthermore, the GIPC Act, allows the transfer of profits as a result of sale and bankruptcy of investment assets in cash in which the investment was initially made to their home countries as long as they satisfy their tax obligations (GIPC Act, Act No. 865, sec. 32(d)/2013, 2013). Ghana has no restrictions on the conversion and transfer of funds. With specific reference to foreign investors, it is also important to note that section 27 of the GIPC Act guarantees the unconditional transferability (through any authorized dealer bank in freely convertible currency) of dividends, interest payments, technology transfer fees and the remittance of the proceeds of sale by an enterprise (GIPC Act, section 27, 2013).

With regards to China, FIEs may only distribute and repatriate profits from China back to their investors after completion of the annual audit, settlement of income tax liabilities and having made up any losses that were carried forward from previous years. A FIE must also set aside a minimum 10% of after-tax profits into a reserve fund until the accumulated reserve fund reaches 50% of the registered capital. Once the accumulated reserve fund threshold of 50% is reached and maintained, the FIE may repatriate all profits to their home country. The mandatory reserve fund ensures that a portion of the profits are re-invested into the FIE (China Market Entry Handbook—The Sovereign Group, 2015). Furthermore, with regards to remittance procedures, all foreign exchange transactions in and out of China are subject to stringent mechanism by the State Administration of Foreign Exchange (SAFE), an agency operating beneath the People’s Bank of China that is in control of drafting rules and regulations governing overseas exchange market activities, inspecting and supervising foreign exchange transactions, handling the State overseas exchange reserves, and most significantly setting RMB exchange /convertibility rate strategy.

4.3. Investor-state dispute settlement (China-Ghana)

Dispute Resolution forms an integral part of foreign investment laws particularly because disputes are inevitable and when not resolved well may led to conflict. The process for dispute resolution can safeguard that FIEs financial benefits are protected. Preferably, an FIE would prefer a procedure that is fair, translucent, independent, and comparatively convenient. Investor-state dispute settlement mechanisms embodied in most investment treaties provide rights to foreign investors to seek redress for damages arising out of alleged breaches by host governments of investment-related obligations (Yannaca-Small, 2006).

Ghana’s legal system is based on Common Law supplemented by specific legislation. Judicial independence is enshrined in the Constitution and all investors—foreign and domestic—have equal access to the courts of law. Investment or business related disputes can be settled through the normal process of instituting civil suits. In addition, alternative dispute settlement mechanisms, such as arbitration, mediation and conciliation, are also being increasingly encouraged by the Government, not only within the judicial system but also by NGOs which promote private-sector-led dispute settlement processes (GIPC Act, section 27, 2013). The Alternative Dispute Resolution Act, 2010 provides the legal basis for regulating the settlement of differences by arbitration, and the enforcement of arbitration awards in Ghana. The Arbitration Act also makes provision for the enforcement of foreign awards in accordance with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted in New York in June 1958 (Shirley & Sun, 2016).

Section 29 of the GIPC Act provides that any dispute between an investor and the Government of Ghana which is not amicably settled may be submitted to international arbitration under one of three methods of third-party dispute settlement. These are: arbitration in accordance with the United Nations Commission on International Trade Law (UNCITRAL); or within the framework of an international agreement on investment protection; or pursuant to any other international machinery for the settlement of investment disputes (Ghana is also a member of the International Centre for Settlement of Investment Disputes (ICSID) and of the Multilateral Investment Guarantee Agency (MIGA). If the parties cannot reach agreement on any of the three methods, the choice of the investor shall prevail. The GIPC Act guarantees the right to international arbitration not only for foreign investors, but all investors covered by the Act (i.e. including local investors registered with the GIPC). Guaranteeing nationals, the right to international arbitration (at their choice) is uncommon. Ghana’s respect for foreign investors’ legal concerns over dispute settlements and conflict resolutions contributes to improving the policy environment in the country.

Recent years have witnessed the increasingly involvement of China into the Investor-State Dispute System. China is among the countries that have signed and ratified the largest number of IIAs. In China’s early BITs, China only committed to limited arbitral jurisdiction, namely the investors could only submit the “disputes involving the amount of compensation for expropriation” (Gallagher & Shan, 2009) to international arbitral tribunal only after a local court in China has determined that an

unlawful expropriation had occurred. Traditionally, citizens and governmental institutions in China have relied heavily on interpersonal relationships as the primary source of dispute settlement. This general preference for mediation as settlement method in contrast to adjudicative methods of dispute settlement such as litigation and arbitration also has been partly motivated by the role of law in Chinese society (Marieke, 2012). Since 2006 the Chinese central government has tried to impose mediation instead of litigation in the course of national policy to maintain “social harmony.” (Marieke, 2012) Chinese parties to a contract will only expect the certainty that a dispute will be concluded on the basis of the contract, instead of the guarantee that a dispute will become almost completely legally predictably (Marieke, 2012) and in commercial disputes a general preference exists for mediation instead of arbitration (Marieke, 2012). China has been a party to ICSID, but would only consider submitting to the jurisdiction of ICSID disputes over compensation resulting from expropriation or nationalization. BITs conducted by China in the first generation, limited investor-State dispute resolution to disputes concerning the amount of compensation due in case of expropriation and nationalization (Dulac, 2010). BITs conducted by China in the second-generation increased the substantive and procedural protection of foreign investors where the investors’ rights that could be brought before an international tribunal were extended to all aspects of the BIT after six months “cooling off” period after which either, parties can refer the dispute to international arbitration (Civil Procedure Law of the People’s Republic of China, 1991).

Two restrictions at the expense of investor protection are still in existence. Firstly, all disputes have to go through “the domestic administrative review procedures” as specified by the laws and regulations of the disputing parties before arbitration proceedings can be started (Civil Procedure Law of the People’s Republic of China, 1991). This means that a dispute must first be considered by the relevant national officials so as to make them aware of the problem and give them the possibility to resolve it. This can delay the start of arbitration proceedings. Secondly, once a dispute is submitted to a Chinese court an investor is no longer allowed to address an international arbitration tribunal (Civil Procedure Law of the People’s Republic of China, 1991). Investor-State disputes in China are conducted by the China International Economic and Trade Arbitration Commission (hereinafter CIETAC). The rules governing the procedure of CIETAC are composed of Part VII of the PRC Arbitration Law together with Chapter 28 of the Civil Procedure Law (Civil Procedure Law of the People’s Republic of China, 1991). Even though China’s investment treaty dispute settlement system as preferred in BITs has become more international, difficulties are still encountered when it comes to enforcement of arbitral awards (Civil Procedure Law of the People’s Republic of China, 1991).

4.4. Salient lessons Ghana can learn from China’s foreign investment regulations

The Chinese have graduated from a very troubled and harrowing past. Since then, China’s real per capita income has also grown by about 8 percent a year on the average while that of Ghana cannot be matched to China’s per capital income growth (The World Bank, 2017). Though Ghana is considered to be the first sub Saharan African country to attain independence, middle income status continues to be declining. Studies have indicated that Malaysia and Ghana gained independence from the British Empire in the 1957 (Adom & Zogbator, 2015). Thus studied the British political, legal institutions, and educational systems. Malaysia is a fast-developing country and part of the middle-income group of nations but Ghana is not (J. K. Kwakye, 2012). Ghana after gaining its republican status established formal diplomatic relations with China particularly due to the fact that both countries have a similar history and timeline. The two countries adopted policies in order to attract foreign investment to strengthen their respective economies but despite the similarities in their beginnings, China emerged as a success story, while Ghana ultimately declined (Briscoe, 2013). Ghana has in one way or the other experienced constant growth, but that growth has remained very heterogeneous across country particularly due to the fact Ghana is rich in natural resources growing much faster than other African Countries. Diop (2015) Substantial amount of China’s production growth has been driven by market reforms. Whereas African nations endorsed major market reforms throughout the 1980s, 1990s, and 2000s, the increases in production have not been at the levels that were anticipated for (Diop, 2015). Remarkably, almost all of those Sub Saharan African countries that have been a rampant destination for FDI have provided huge incentives to attract

FDI's. In Ghana, for example, the Free Zones Act gives foreign firms which export at least 70% of their products tax holidays firstly and lower taxes after the grace period. Furthermore, under the Free Zones Act, the Ghana Free Zones board has recognized a free zone enclave where infrastructure is fully established for firms to cite (Turkson et al., 2015). Mostly, the general belief is that, because FDIs are able to offer rare capital and create technological spillovers for internal firms, providing these incentives to entice them can be beneficial to the host country. Though the provision of such incentives is in the right direction, the numerous benefits expected from FDI still remain intangible for almost Sub Saharan African countries including Ghana. In some cases, the effect of FDI on growth has been negative. The rationale is that the presence of FDI as an alternative of providing support for the local firms may arrest the market shares of the local firms or even borrow from the indigenous financial market and then crowd local firms out (Turkson et al., 2015). This is anticipated since foreign firms will usually have a longer track record, and they stand in a better position than the local firms to get access to the domestic funds (Turkson et al., 2015). This is supported by findings from Frimpong and Oteng-Abayie (2006), Asiedu (2006) and Waldkirch and Ofosu (2010). Also, according to Dominic, Ghana's tactic to attracting foreign investment is not really effective because it is mostly based on a generalised approach to all potential investors and does not relate investment protections to certain developmental benefits to the State (Dominic N Dagbanja, 2014).

China has also focused on equity joint venture companies, cooperative joint venture companies and wholly foreign owned enterprise as a form of absorbing FDI (Huang, 2007). China resulted in only joint venture as entry of FDI in selected sectors and industry in the early reformation. This is due to ideology reason to tapped into the advance technology of it partners. This move in equity and cooperative joint venture reform enable China gain the necessary share in its development. This reform strategy can be implicated by Ghana in attracting FDIs for national growth. The sectoral limits on FDI limited foreign participation in certain economic sectors with regulations such that industries where Chines partners playay lading roles have majority shares.

On tax, China has extensively but selcetively used tax incentives to idrect FDI in selectedd ares of it economy and industries. Foreign Funded Enterprises enjoy tax exemptions and reductions in the national business income tax such as exemptions on custom duties and value added tax for imported equipement and technology, exemptions and reductions in local business income tax and full refund for income tax pain on reinvested earnings with no retriiction on profit remittnace and capital repatriation. Not all profits can be repatriated or reinvested after tax clearance. A portion of the profit (at least 10 percent for WFOEs) must be placed in a company's reserve fund account. This is treated as part of owner's equity on the balance sheet. This account is capped when the amount of reserves reaches 50 percent of the registered capital of the company. The investor can also choose to allocate some of the remainder to a staff bonus or welfare fund or an expansion fund, although these are not mandatory for WFOEs. Further, no profits can be distributed before losses from previous years have been made up. The remaining balance is available for redistribution. Profit repatriation can only be conducted once a year after the annual audit has been completed. The purpose of the audit is such that the State Administration of Taxation (SAT) can make sure all corporate income tax (CIT) has been paid up with regard to the profits being distributed. This is why all foreign-invested enterprises (FIEs) are required to go through the annual audit for tax compliance conducted by the local tax authority, which is usually completed around June or July every year.

Also the economic reform and open door ploicy of Chaina has enabled Chian become more intergrated into the global economy and rapid growth in it FDIs (Zebregs & Tseng, 2002).

On environment China can adopt the environmental structure of Ghana via the institutiton.

Institutional arrangements for the management of resources and the environment emphasize participatory planning involving local communities and institutions, non-governmental organizations, and decentralized sectoral organizations (van Rooij, 2006).

The Chinese success could be attributed to investments in the export-oriented sectors. Investments have flown mainly in labor-intensive industries such as textiles and toys. FDI has increased the productivity in Chinese labor and capital productivity across the industries. Besides the productivity issues, the government's fiscal incentives such as tax incentives and lower duties coupled with the huge domestic economy has resulted in low-cost products. As a result of its cheap production facilities, China has become the world's manufacturing destination. Consumption of the "Made in China" products in western economies has increased by significant levels in the last two decades. In these two decades, India has not made any solid attempts to attract investments in the exports sectors. India thus missed out on the manufacturing boom in the 1980s and 1990s to China.

From the authors point of view, the Chinese system is better and Ghana can learn a lot from China. China encourages advantageous FDI policies (Guoqiang, 2005). The Chinese government pays more attention on industrial management on FDI. China promotes FDI for the purposes (Guoqiang, 2005) of the following which Ghana can adopt.

- Transforming traditional agriculture, developing modern agriculture and promoting the industrialization of agriculture.
- Producing transportation infrastructure, energy sources, raw materials and other basic industries.
- Tapping into cutting edge, technology oriented industries such as electronic information, bioengineering, new materials, and aviation and aerospace, as well as establishing local R&D centers.
- Encouraging foreign businesses to utilize advanced and techniques to transform traditional industries such machinery, textiles, and consumption goods materials as well as to upgrade their equipment and facilities.
- Using raw and renewable comprehensively, initiating environmental protection projects, and modernizing public utilities.
- Encouraging export-oriented FDI projects.

5. Conclusion

This article has successfully indulged in a comparative study of the Ghana and China foreign Investment Regulation or laws, drawing lessons for Ghana policymakers and offering various suggestions. The study adopted a comparative analysis as a research methodology with the aim of identifying the unique and distinctive features peculiar to the two countries regarding the foreign investment laws of both countries. By thoroughly examining some of the relevant existing literature, this article points out the competences in the claims and supporting arguments that are usually made to praise Chinese foreign investment law and to project it as a cause of the massive FDI into China. On the other hand, this article discusses the somewhat the assertions that despite the attractiveness of Ghana's foreign investment laws, it does not necessarily accelerate the development of the country and as a result the significance of FDI is not seen in Ghana. However, before cossetting in the said comparative study, this article begins with an explanation of what foreign direct investment is and why business entities look to expand abroad and why host countries look to attract foreign direct investment (FDI). The article explored the backgrounds of China and Ghana as they relate to investment policy and their history and effectiveness in attracting FDI. And finally compare Ghana's Investment Promotion Centre Act to the FDI policies fashioned by China. Ghana and China subscribes to a number of international conventions on industrial and intellectual property with respect to foreign investments. The right of establishment for both countries follow a registration process, however, the processes involved in business registration in China is more bureaucratic as compared to Ghana. Ghana and China have various foreign investment laws applicable to international standard, however, Ghana's concept of Foreign Investment and applications is not far different from that of China. China and Ghana remains an attractive place for investment and the future stance stares bright for non-national or foreign investors. The existing BITs laws of both nations has

number of bureaucracies, however both countries share some similarities especially in environment protection, tax incentives, principles of rule of law, transparency, non-discrimination and the protection of property rights but leaves the choice of policies to each country, based on its own economic and institutional capabilities. These investments laws are geared towards the provision of maximum protection to investors and the individual nation at large. Foreign investment laws help governments and stakeholders to develop the right BITs policy investment climate at the country and regional levels for sustainable development of the individual nation. Ghana could learn from China particularly by means of using raw and renewable materials comprehensively, introducing attractive labour laws, and reforming public utilities and most notably Inspiring export-oriented FDI projects. From the perspective of the author, this preliminary appreciation of the Chinese foreign legal system was of much significance. The comparative study showed in this article may also benefit Chinese policy-makers as well as Ghanaian policymakers.

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