Cross-Border Commercial Transactions and Conflict of Laws: Analysing the Legal Challenges for Ghanaian Corporations

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1. Background and Rationale

The nature of businesses has changed in recent times due to globalization and digital technology. Nonetheless, the contemporary business landscape in the global market has led to international corporations encountering significant challenges when navigating the complex system of cross-border commercial transactions.[1] Due to the growing number of cross-border commercial transactions, which entail the movement of services, capital and goods across the borders of multiple countries, there has been a clash of legal and jurisdictional processes that affect the strategies and overall success of companies.[2] Cross-border commercial transactions are governed by national laws as well as international trade agreements such as regional trade agreements and the World Trade Organization that oversee the relationship between private transactions and public law across borders.[3] Conflicting jurisdictional processes and legal norms during cross-border commercial transactions can be explained under the concept of conflict of law. Conflict of law entails laws from varied jurisdictions that intersect when people interact during trade, marriage and employment. Moreover, conflict of law necessitates that a single legal system is utilised by the court to guide the process of finding a resolution for the affected parties.[4] However, the choice of law during a conflict of laws is a challenging process due to the

[1] Katerina Ristovska and Aneta Ristovska 'The Impact of Globalization on the Business' (2014), 47 (3-4) Economic Analysis <https://core.ac.uk/download/pdf/33812244.pdf> accessed 20 November 2023
[2] Christopher Whytock 'Conflict of Laws, Global Governance, and Transnational Legal Order', (2016) 1 (6) UC Irvine Journal of International, Transactional and Comparative Law <https://scholarship.law.uci.edu/ucijil/vol1/iss1/6/. Accessed 20 Nov. 2023> accessed 20 November 2023
[3] Robert Howse and Joanna Langille 'Continuity and Change in the World Trade Organization: PluralismPast, Present and Future' (2023) 117 (1) American Journal of International Law <https://www.cambridge.org/ core/journals/american-journal-of-international-law/article/continuity-and-change-in-the-world-trade-organization-pluralism-past-present-and-future/C4D2467D46520D4E7C5D1B715D052627> accessed 21 November 2023.
[4] Mark Addey 'Conflict of Laws: Choice of Law Theories in Tort', SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4574112> Accessed 21 November 2023.

power struggle of determining which law should control the commercial transaction.[5] Additionally, conflict of laws during cross-border commercial transactions is complex due to the jurisdiction, recognition, applicable law, parallel proceedings and the implementation of rendered judgements that must occur to sustain international trade.[6] In Ghana, cross-border commercial transactions are a frequent occurrence due to the country's rich natural resources and skilled human capital that have attracted foreign investment and trade in the international market.[7] During trade with other countries, the Constitution of Ghana is the Supreme Law and no other law including international law can supersede it.[8] Thus, it is a challenge for businesses to manoeuvre conflict of laws during cross-border commercial transactions when laws from the countries of involved parties are unflinching in their stance for supremacy. On account of the challenges that are likely to be faced during cross-border commercial transactions, this study will be relevant to involved parties such as corporations, legal practitioners and policymakers to improve international trade.

2. Research Aim and Objectives

This study intends to investigate the challenges faced by Ghanaian corporations in cross-border commercial transactions due to the conflict of laws. To achieve this research aim, the study seeks:

[5] Laura Little 'Conflict of Laws Structure and Vision: Updating a Venerable Discipline', 31 (2) Georgia State University Law Law Review' <https://readingroom.law.gsu.edu/cgi/viewcontent. cgi?article=2780&context =gsulr.> accessed 21 November 2023

[6] Milhail Danov 'Cross-border litigation: Evaluating the Brexit impact – a socio-legal model for data analysis', (2020) 27 (2) Maastricht Journal of European and Comparative Law <https://journals .sagepub.com/doi/10.1177/ 1023263 X20904314> accessed 21 November 2023.

[7] Appiah Emmanuel Danquah 'Impact of International Trade on the Economic Growth in Ghana' 13 (4) Scitech Research Organisation <http://scitecresearch.com/journals/index.php/jrbem/article/view/1795.> Accessed 21 November 2023.

[8] Reginald Nii Odoi 'The Constitutionality of International Business Transactions' (2020) SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3657344> accessed 21 November 2023.

i. To examine the prevalent challenges corporations face due to conflict of laws in cross-border transactions.
ii. To examine the impact of challenges in cross-border commercial transactions on businesses.
iii. To assess mitigation strategies used to address conflict of laws in cross-border commercial transactions.

3. Methodology

This section covers the research methodology that will be adopted for the study. This entails the research approach, population of the study, sample size and sampling technique, instrument for data collection, data collection procedure, data analysis and ethical considerations.

3.1 Research approach and design

The study will utilise a quantitative research approach, which will involve the collection of numerical data and analysis through statistical processes for the explanation of a specific phenomenon[9]. This will be useful for generating objective findings that can be compared to other data on the phenomenon.[10] Also, the descriptive research design which design entails the description of a phenomenon as well as its characteristics to determine how it occurs will be adopted as the research methodology of the study for describing the challenges faced by corporations in this study.

[9] Xueting Xiong 'Critical Review of Quantitative and Qualitative Research' (2022) 670 Advances in Social Science, Education and Humanities Research <https://www.atlantis- press.com/ proceedings/mhehd- 22/125975791> accessed 17 November 2023

[10] Nikolaos Basias and Yannis Pollalis 'Quantitative and Qualitative Research in Business & Technology' (2018) 7 (1) Review of Integrative Business and Economics Research <http://buscompress. com/uploads/ 3/4/9/8/ 34980536 /riber_7-s1_sp_h17-083_91-105.pdf> accessed 17 November 2023

3.2 Population of the study

The population of this study will cover corporate lawyers who manage conflict of laws in cross-border commercial transactions in the selected companies on the Ghana Stock Exchange.

3.3 Sample size and sampling technique

Companies engaged in the Manufacturing, Services and Agriculture Sectors will be selected from the Ghana Stock Exchange using stratified sampling. Stratified sampling entails the partitioning of a population into subgroups (strata) and subsequently using random sampling to select from each subgroup.[11] Following the establishment of subpopulations (Manufacturing, Services and Agriculture Sectors), simple random sampling will be used to finally select the companies. Also, corporate lawyers will be selected using purposive sampling due to their expertise and available knowledge on managing conflict of laws in cross-border commercial transactions. Purposive sampling refers to a sampling technique used to select individuals that are most suitable for providing useful information[12].

3.4 Data collection instrument

Questionnaires will be used as the data collection instrument for this study. The questionnaire will cover four sections. Section A will address the demographic profile of respondents. Sections B, C and D will entail questions that address the three specific objectives of the study.

3.5 Data collection procedure

A letter will be sent to the management of the companies to seek permission to conduct the study. Following this, a meeting will be held with the corporate lawyers to inform them of the purpose of the study. Consent will be obtained for managers to participate in the study.

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[11] Trong Duc Nguyen, Ming-Hung Shih and Divesh Srivastava 'Stratified random sampling from streaming and stored data ' (2020), Proceedings of the 22nd International Conference on Extending Database Technology (EDBT) <https://link.springer.com/article/10.1007/s10619-020-07315-w> accessed 17 November 2023,

[12] Steve Campbell and others 'Purposive sampling: complex or simple? Research case examples', (2020) 25 (8) Journal of Research in Nursing < https://pubmed.ncbi.nlm.nih.gov/34394687/> accessed 17 November 2023

Questionnaires will be administered to the corporate lawyers to gather data within the premises of the company. Data collection will take 21 days.

3.6 Data analysis

The questionnaires will be assessed for completeness. Questionnaires that have been filled appropriately will be coded and keyed into the Statistical Package for Social Sciences version 26. Under Section A, the demographic profile of the respondents will be analysed through the use of descriptive statistics (percentages and mean). Additionally, Sections B, C and D will be analysed using inferential statistics such as regression and correlation. The results of the analysis will be presented in tables as well as charts.

3.7 Ethical considerations

Ethical considerations such as anonymity, informed consent and confidentiality. Anonymity involves the concealment of an individual's identity to enable expression without fear of punishment or conflict[13]. Thus, the identity of respondents will be protected using pseudonyms. Furthermore, respondents will be informed about the essential aspects of the study to aid individuals make informed decisions about participating in the study. Informed consent can therefore be defined as the process of presenting important research information to potential participants to make informed and rational decisions about joining a study[14]. Also, confidentiality involves the protection of data obtained from research to limit access to the public and protect the interest of individuals[15]. Hence, raw data collected will be protected with only aggregated data being published to prevent the identification of specific individuals.

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[13] , Alfred Moore, 'Anonymity, pseudonymity, and deliberation: Why not everything should be connected (2018) The Journal of Political Philosophy <https://eprints.whiterose .ac.uk/124760 /1/Moore_Anonymity_and_ Deliberation.pdf> accessed 20 November 2023.

[14] Rashimi Ashish Kadam, 'Informed consent process: A step further towards making it meaningful!' (2017) 8 (3) Perspectives in Clinical Research, <https://www.ncbi.nlm. nih.gov/pmc/articles/ PMC5543760> accessed 20 November 2023.

[15] Jaap Bos, 'Confidentiality' in: *Research Ethics for Students in the Social Sciences* (Springer, Cham) https://link.springer.com/book/10.1007/978-3-030-48415-6. Accessed 20 November 2023.

4. Thesis Statement

In the age of the global economy, corporations involved in cross-border commercial transactions are faced with challenges from conflict of laws due to jurisdictional complexities, compliance bottlenecks and disparities among countries. Based on this, the thesis aims to investigate the multifaceted challenges of cross-border commercial transactions and understand their impact to promote a more effective business environment.

5. Theoretical Framework

This section presents a theoretical framework for the study. Theories such as transaction cost economics and legal pluralism theory will be adopted and explained in relation to this research.

i. **Legal pluralism theory**

Legal pluralism theory has been developed by several people such as Max Gluckman, John Griffiths and Boaventura de Sousa over the years. Legal pluralism theory suggests that multiple legal systems can interact within specific societies due to the multiplicity of normative orders that coexist.[16] On the global scale, the theory indicates that involved parties mobilize varied forms of law and integrate legal registers in varied settings to generate layers of law that form a hybrid.[17] Concerning this study, legal pluralism theory provides a theoretical background for the coexistence of multiple legal systems and their interaction at both the national and international levels. Additionally, the theory highlights how corporations must weave through the challenges of the multiplicity of laws during cross-border transactions for the success of their businesses.

[16] Emma Patrignani ‘Legal Pluralism as a Theoretical Programme’ (2016) 6 (3) Oñati Socio-legal Series, <https://opo.iisj.net/index.php/osls/article/download/494/906>. Accessed 21 November 2023.
[17] Bertram Turner and Melanie Wiber ‘‘Legal Pluralism and Science and Technology Studies: Exploring Sources of the Legal Pluriverse’ (2022) 48 (3) Science, Technology & Human Values <https://journals.sagepub.com/doi/full/10.1177/01622439211069659>. accessed 21 November 2023.

ii. Transaction cost economics theory

The theory of transaction cost economics was initiated by Ronald Coase and propounded by Oliver Williamson in the mid-1970s.[18] The theory suggests that transactions are costly and necessitates that during a transaction between two parties, an appropriate organizational form or relative transaction costs must be assessed to determine what is the best for a transaction.[19] Concerning this study, the transaction cost theory provides insight into how the complexities of cross-border transactions create impacts such as an increase in the costs for corporations and changes in strategies. Also, the theory can be used to determine the challenges of transactions across borders and the strategies to mitigate them.

6. Literature Review

6.1 Existing Research

Prevalent challenges corporations face due to conflict of laws in cross-border transactions.

Shumilo and Lukan (2020) conducted a study on conflict of law regulation in cross-border copyright inheritance in the European Union. Data was collected through analysis and synthesis of secondary data such as statutory, doctrinal and law enforcement materials. Data analysis was carried out through a comparative analysis. The results of the analysis indicated that factors such as the principle of territoriality, the interpretation of lex loci protectionis and the multiplicity of statutes are the challenges that corporations encounter during conflict of laws in cross-border transactions.[20]

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[18] Kirsten Foss and Nicolai Foss 'Coasian and modern property rights economics', (2015) 11 (2) Journal of Institutional Economics <https://www.cambridge.org/core/journals /journal-of-institutional- economics/ article /coasian-and-modern-property-rights-economics/A3F22ECF5EFD9FB3A5AB94ADCED4D60F> accessed 21 November 2023.

[19] Aric Rindfleisch 'Transaction cost theory: past, present and future' (2019) AMS Review https://link.springer.com/article/10.1007/s13162-019-00151-x. accessed 21 November 2023.

[20] Dmytro Lukianov, Inesa Shumilo and Mariia Lukan 'Conflict of Law Regulation in Cross-border Copyright Inheritance' (2020) 27 (2) Journal of the National Academy of Legal Sciences of Ukraine <https://www.research

The impact of challenges in cross-border commercial transactions on businesses.

Skadina and Veinburg (2021) assessed the impact factor in cross-border transactions for international Fintech businesses based in Russia and Britain. Data was collected through interviews with representatives of varied Fintech companies. Data analysis was conducted through coding and content analysis. The findings revealed that commercial risk, currency risks, operational problems and financial losses were the impact of challenges in cross-border transactions.[21]

Mitigation strategies used to address conflict of laws in cross-border commercial transactions.

Sun and others (2021) examined the navigation of cross-border institutional complexity through a review and assessment of the strategies of multinational companies. Data was gathered through a literature review using journal articles. Data analysis was conducted through a thematic analysis. The results of the analysis indicated that the development of corporate political ties, assessment of country risks and strategic corporate social responsibility were the mitigation strategies used to address conflict of laws.[22]

6.2 Gaps in Research

Existing studies (Sun and others, 2021; Skadina and Veinburg 2021, Shumilo and Lukan, 2020) have examined the challenges of conflict of laws in cross-border transactions and its related issues. However, the mentioned studies were based on information from Western companies that have a unique socio-economic environment. Hence, this study will provide information that is

gate.net/publication/348462454_Conflict_of_Law_Regulation_in_Cross-border_Copyright_Inheritance> accessed 21 November 2023.

[21] Helena Skadina and Vilniis Veinnbergs 'Cross-Border Risks as an Impact Factor for International Fintech', (2021) Web of Conferences https://www.shs-conferences.org /articles/shsconf/abs /2021/0 3/shsconf_glob20_03026/shsconf_glob20_03026.html. Accessed 22 Nov. 2023.

[22] Pei Sun and others 'A review and assessment of multinational nonmarket strategy research', (2021) 52 Journal of International Business Studies, <https://link.springer.com/article/10.1057/s41267-021- 00438-x> accessed 22 November 2023.

more relevant to the Ghanaian business environment. Also, previously conducted studies (Sun and others, 2021; Shumilo and Lukan, 2020) utilised secondary data to conduct the study and focused on varied objectives relevant to their research topic. However, this study is intended to utilise primary data for suitable results and collect data based on the unique objectives of this research. Moreover, this study will adopt the quantitative approach to generate objective findings from experts with experience in conflict of laws in cross-border commercial transactions.

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