

**GHANA: PUBLIC PRIVATE PARTNERSHIPS (PPP or P3) - Series 2
[Managing Likely Risks—Part 1]**

**SPECIAL
POINTS OF
INTEREST :**

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from the Managing
Partner**

> **Series on Public
Private Partnerships
(Ghana) - Managing
Likely Risks—Pt 1**

> **A Comparative Anal-
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Ghana is a developing country and a tenderfoot as regards the implementation of PPP's. As is common in such situations, the tendency for developing countries such as Ghana is to provide extensive and generous guarantees in the early stages of their P3 programmes in order to attract private sector participation and financing of infrastructure. Many developing countries have accepted high fiscal commitments and risks at the early stage of implementation of PPPs.

Experts claim that government guarantees serve as second-best instruments in the absence of a stable political environment, effective regulatory institutions, independent judicial systems, and an overall competitive climate. Thus, a crucial condition for an effective public-private partnership in infrastructure projects is the provision of state guarantees. It has been the expectation of several governments that rapid infrastructure development will promote high economic growth in the future, which would minimise demand for guarantees.

Guarantees have been issued to cover several risks, and those which are most commonly retained by Government are as follows:

a) Site availability -- The government guarantees that the proposed project will be given precedence over others in the given situation. Government commits to buy the proposed project site and then pass it to the private sector company. In addition, it takes the responsibility to relocate and compensate residents who will be affected by the proposed project.

b) Market risk -- If the buyer of the service is a state utility company, government, the regulator, normally will commit to a minimum off-take contract purchases and prices (take or pay arrangements) from the service provider. These provide a guaranteed market for the P3 project's output (e.g. power, water);

There will be an off-take agreement between the service provider and government to purchase/sell portions of the service provider's future production. The off-take agreement will be normally negotiated prior to the construction of the facility such as a mine in order to secure a market for the future output of the facility. If lenders can see that the company (service provider) will have a purchaser of its production, it makes it easier to obtain financing to construct a facility.

c) Payment Risk -- If the buyer of the service is a state utility company, government guarantees contractual performance;

d) Change in law risk -- Government assures the private sector partners that changes in the legal framework will not be injurious to contractual agreements;

e) Foreign exchange risk -- The government/central bank agrees to provide forward cover for the proponent. The forward cover will be a contract between the central bank/government and the private partner, whereby the rate of exchange is fixed immediately, for the buying and selling of one currency for another, for delivery at an agreed future date.

This will consist of either: a) making foreign exchange available for the project; or b) arranging for foreign exchange purchase through a forward contract for delivery at a later date during contract period. This resolves currency mismatch problems where project revenues are in domestic currency while debt repayments are in foreign currency. In addition, the inability to charge cost-recovering tariffs for services will result in difficulties of raising sufficient local currency equivalent to foreign currency denominated debt repayments; and

f) Regulatory and political risks -- Regulatory risk assures that the regulatory environment will be predictable, transparent and stable, and that government will not enact and enforce new regulations that will adversely affect the financial viability of the project; that all sector specific regulations will be enacted only in accordance with the concession agreement. Political risks may include changes in law, war, hostilities, belligerence, revolution, insurrection, riot, public disorders, or terrorist act.

These guarantees impose significant future contingent liabilities on governments. In other words, a government is bound legally to take on obligations if clearly specified uncertain event should happen. Contingent liabilities may be explicit and implicit.

In brief, in the case of explicit contingent liabilities, the contract mentions the specific trigger events/risks which occurrence will crystallise into a liability for government. Implicit contingent liabilities, on the other hand, commit government to obligations despite the absence of a contractual or policy commitment to do so (e.g. provision of relief in the event of uninsured natural disaster or bailing out public utility enterprise).

The conventional budgeting system followed by most governments also contributes to the growth of the contingent liabilities. In such a budgeting framework, guarantees appear as an off-balance sheet item. This sometimes is deliberately done to avoid infringement of international fiscal restriction treaties -- for example EU Maastricht Treaty and other legislations which impose such fiscal ceilings on members as: budget deficit/GDP of less than 3% and Sovereign debt/GDP of less than 60%. Since they do not appear as part of the balance sheet and resource utilisation statements, they are often viewed as a free resource, which motivate governments to issue guarantees liberally in order to attract needed private sector infrastructure investments.

Due to the implications of contingent liability risks would be felt in the long-term only, there are no immediate budgetary implications: there is less incentive on the part of government to be cautious in creating contingent liabilities.

Moreover, owing to the high enthusiasm, ambition and haste of governments to extend every support to induce foreign investment, the private sector investor may take undue advantage and often insist on blanket guarantees. Once they get commitment of assured good returns, the investors sometimes do not professionally appraise the projects and their risk/return profile. As a result, unviable or uneconomic projects are also taken up for investment, which lead to the situation where government sometimes end up paying the minimum assured returns to the investors from their own budgetary resources.

Ghana does not have the appropriate institutional and organisational mechanisms to analyse and report possible fiscal liabilities for individual PPP projects before they are awarded at the feasibility stage. This situation is underpinned by the fact that, globally, there are no comprehensive universal accounting standards existing for the treatment of PPPs in national budgets and international comparable statistics.

To be continued; please stay tuned.

THE GIPC ACT 2013 - WHAT'S NEW? (A COMPARATIVE ANALYSIS) - Series 2**Local participation****Joint Ventures*****What is new?***

The new Act requires joint ventures to have at least ten per cent (10%) local partnership or participation – Section 28(a)

What does it mean?

This promotes local content and indigenous participation; and offers protection to the Ghanaian retail sector.

Registration of wholly owned Ghanaian enterprises with the Centre***What is new?******Section 25***

An enterprise which is wholly owned by a Ghanaian may after being incorporated or registered be registered with GIPC; and after being registered with the Centre, be entitled to the benefits and incentives set out in the Act.

What does it mean?

Under the Repealed Act, only enterprises with foreign participation were required to register with GIPC as strictly and exactly provided in the literal language of the law. In practice, nonetheless, indigenous Ghanaian companies could register with GIPC; even though the Repealed Act did not provide for it. The novelty in the new Act is that the practice of local companies having the option to register with GIPC is now provided in the letter of the law, which seeks to encourage Ghanaian enterprises to register with the Centre.

The extension of registration with the Centre to Ghanaian enterprises seeks to enhance the investment climate for domestic enterprises by increasing their competitiveness. The fact that Ghanaian enterprises are not required under the GIPC Act, to meet the minimum foreign capital requirements in order to be eligible for registration with the Centre will encourage them to register with the Centre, and enable them to avail themselves of the benefits and incentives under the GIPC Act.

Section 27(c)***What is new?***

*c. A trading enterprise by a noncitizen requires a minimum capital of \$1 million in cash or goods and services, and the enterprise is also required to employ **at least 20 skilled Ghanaians**. The minimum capital requirement under the Repealed Act was \$300,000.00, and the enterprise was required to employ **at least 10 skilled Ghanaians**.*

What does it mean?

Apart from the increase in the capital requirement being increased, the local content requirement has also been increased.

Activities reserved for Ghanaians***What is new?***

Under section 27 of the GIPC Act, the activities reserved for Ghanaians have been expanded to include the following:

- a. the printing of recharge scratch cards for the use of subscribers of telecommunication services;
- b. the production of exercise books and other basic stationery;
- c. the retail of finished pharmaceutical products; and
- d. the production, supply and retail of sachet water.

Continued: THE GIPC ACT 2013 - WHAT'S NEW? (A COMPARATIVE ANALYSIS) - Series 1

What does this mean?

Section 18 of Act 478 outlines activities reserved for Ghanaians and these have been maintained in the new Act with extended scope. This is a measure aimed at empowering enterprises owned by Ghanaians.

Also, under the Repealed Act, non-citizens were prohibited from the sale of anything whatsoever in a market, petty trading, hawking or selling from a kiosk. This provision has been amended and expanded to include the provision of services in a market. "Kiosk" has also been replaced with "a stall at any place". Under the Repealed Act, a non-citizen could operate a taxi or car hire service in an enterprise that has a minimum fleet of ten new vehicles. This has been amended to a minimum fleet of twenty-five vehicles.

Section 27(2) further provides that the Minister in consultation with the Board may by legislative instrument amend the list of enterprises reserved for citizens and enterprises wholly owned by citizens.

Automatic Expatriate Quotas

What is new?

The automatic expatriate quotas have been reviewed under the GIPC Act. Under section 35 of the GIPC Act, the following are the automatic expatriate quotas:

Paid up capital	Number of quotas
\$50,000- \$250,000	1
\$250,000- \$500,000	2
\$500,000- \$700,000	3
&700,000 and above	4

Under the Repealed Act (section 30), the following were the automatic expatriate quotas:

Paid up capital	Number of quotas
\$10,000- \$100,000	1
\$100,000- \$500,000	2
\$500,000 and above	4

What does this mean?

An enterprise that intends to employ an expatriate shall apply to GIPC for facilitation of the employment and the application shall specify the number of expatriates to be employed. The Act ties automatic expatriate quotas to higher and expanded foreign capital brackets and more monitoring and control of employment of expatriate should be expected.

To be continued; please stay tuned.

INTERNATIONAL IMMIGRATION NEWS ALERTS

NETHERLANDS – Court Rules No Work Permit Required for Japanese Nationals

As per the ruling of a High Administrative Court of the Netherlands, Japanese nationals are allowed to work in the Netherlands without the need to secure Dutch work authorisation.

This is likely to have major implications for Japanese nationals on the Dutch labour market and for employers who seek to hire Japanese nationals on a temporary or permanent basis.

In short, this would entail that several Dutch work and residence permit conditions (e.g. intra company transfer or highly skilled migrant conditions) will no longer be applicable and a 'mere' residence permit as an employee would be sufficient for a Japanese national to legally work in the Netherlands.

The judgement is based on the Treaty of Commerce and Navigation between Netherlands and Japan of 1913, which is similar to the Treaty on Friendship, Establishment and Commerce between Netherlands and Switzerland of 1875, whereby Swiss nationals are allowed to work in the Netherlands without the need for a Dutch work permit.

The Court ruled that the same principles should be applied regarding the Japanese treaty, and that Japanese nationals should no longer be subject to Dutch work authorization when taking up employment in the Netherlands.

If you have Japanese national assignees going to the Netherlands, please talk to your Dutch immigration adviser about the possibility that they will not require a work permit.

Source: Peregrine News Alert

LEBANON – Foreign Nationals Excluded from Some Professions

The Lebanese Minister of Labour has issued a resolution in which certain vocations and professions in Lebanon have been earmarked as the exclusive preserve of Lebanese nationals.

However, foreign nationals may be exempt from this new directive if they are specialists or technicians in positions that cannot be filled by a Lebanese national. Moreover, any foreign national currently holding a Lebanese work permit will be allowed to continue to work in Lebanon until the work permit expires.

All jobs and business related to the administration, banking, accounting, education, publishing, engineering, medicine, law and insurance sectors, are now reserved for Lebanese nationals, including but not limited to President, Dean, director, cashier, accountant, secretary, sales or marketing representative, teacher, engineer, nurse and pharmacist.

Nonetheless, the Minister of Labour can decide to exclude foreign nationals from these provisions, if they fulfill one of these criteria:

- Specialist or technician performing jobs that cannot be filled by Lebanese nationals;
- Director or representative of a foreign company registered in Lebanon;
- Lebanese resident since birth;
- Of Lebanese origin or born to a Lebanese mother;

CHINA – Three-Year Work Permits To be Issued in Beijing

Authorities in Beijing have stated that granted particular situations, alien work authorisation permits may be issued valid for up to three years, rather than the standard twelve months.

Subject to providing the adequate supporting documentation, foreign national employees of Foreign Investment Companies, including China-Foreign Joint Ventures and Cooperation Projects and Wholly Foreign-Owned Enterprises, and Representative Offices, may be granted an initial or extension alien employment permit valid for up to three years.

The supporting documents which require sufficient validity include the employment contract, the applicant's passport and the employer's business licence (or Industrial and Commercial Registration Certificate).

Note that residence permits in Beijing will continue to be issued for no longer than twelve months, and would therefore still need to be renewed annually for an assignee holding a multiple-year alien employment permit.

Source: Peregrine News Alert

The country of residence of the foreign national allows Lebanese nationals to perform the job that the foreign national wants to perform in Lebanon.

Palestinian and Syrian nationals are also exempt from the provisions in certain circumstances.

Source: Peregrine News Alert

VIETNAM – Business Visas No Longer Available on Arrival

Vietnam's new immigration law, Effective 1 January 2015, Vietnam has introduced a new immigration rule that obliges all business travellers and those intending to work in Vietnam to obtain a business visa in advance from the Vietnamese embassy or consulate in their home country.

Previously, for qualifying nationals, it was possible to obtain a business visa on arrival in Vietnam, or to convert to a business visa after arriving in Vietnam.

The new rules may delay entry for all nationals travelling for business or work, due to the higher volume of business visa processing at Vietnamese embassies and consulates abroad.

In brief, the application process entails that the applicant's host company in Vietnam must sponsor the application by applying for a visa authorisation letter, or pre-approval letter, in Vietnam, which will be sent directly to the applicant's home country consulate in support of the application.

In support of this application, the host company must provide a detailed schedule of the business or work activities that the applicant will conduct while they are in Vietnam.

Source: Peregrine News Alert

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**Quality, Responsibility,
Efficiency and Mutuality: The
client is our boss, quality is our
work and value for money is our
goal**



Paa Kwesi Hagan
Managing Partner

GT Legal is a licensed law firm incorporated under the laws of Ghana. Our Firm's objective is to provide the best of services to meet the needs of our clients in a constantly evolving world. We do this by putting our core values into action, rooting our business decisions in legal understanding and basing our targets on what is needed to solve each client's problem; rather than depending exclusively on what we can accomplish in the short-term or in the immediate future. As a fully integrated law firm based in Accra, Ghana, we take pride in our firm's capability and the approachable and team-oriented manner in which we work.

We act and advise across the broad spectrum of corporate work including public takeovers, private mergers and acquisitions, complex joint ventures, disposals and corporate restructurings, as well as general corporate, commercial, antitrust and corporate governance issues.

We also advise and act for companies and individuals in a wide variety of sectors of Corporate immigration, Visa and Consular advisory services, Document and Passport Procurement, Private-Client Immigration, Economic Citizenship (Citizenship-by-Investment schemes), Immigration Audits and Compliance, Labour and Employment law.

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OUR CORPORATE RESOLUTION

For us in Ghana, the mixed weather conditions in the last days of 2014 finally gave way to the Harmattan, a dry desert wind, lowering the humidity and creating hot days and cool nights: that has now been supplanted by occasional rains. Fortunately, for some abroad at least, the snow has now melted, and replaced with rain as well. Most importantly however, we hope, we all had lots of fun during the festive season, though it is now back to the grindstone for most of us.

We want to welcome you to 2015; and once again, wish you Happy New Year! As is the tradition in this time of year, many have set themselves resolutions to ensure self-improvements in different

aspects of their lives.

For us as a law firm, we have reflected on the changes we need to make and the corporate resolutions we have set for ourselves. They are worthy and we guarantee to stick to them.

Ultimately, we will continue to offer the highest standard of client care and practice management, so you can be sure you're getting the best possible service. We are still committed to our guarantees, business ethics and the core values of quality, responsibility, mutuality and efficiency. Our internal policies describe what these commitments mean in

practice and what you can expect of us.

Furthermore, we will continue to listen to you; while we deliver exceptional corporate and immigration services complemented by premier professional and legal standards of client care.

Now to all our readers; you are welcome to the 6th edition of GT Legal Newsletter, nevertheless the first of 2015. As you subscribe to it, we hope to hear your feedback.

Thank you for all your support!

RELOCATION NOTICE: WE HAVE MOVED

Dear valued Clients both existing and prospective, Partners and friends; we are pleased to inform/ announce that with effect from 14th November, 2014, Globetrotters Legal has relocated to a new office address as follows: the main telephone will change and we will inform you accordingly in due time; all other contact information remain unchanged.

Our new office building can be located at:

NO. 8

ADEMBRA ROAD

EAST CANTONMENTS

ACCRA

Email: info@globetrotterslegal.com

Kindly note that you can find a simple map and directions to the new office on the Contact page

of our website (www.globetrotterslegal.com).

This is a step in furthering client care and we are keen on hosting you in the friendliest of environments and most comfortable surroundings. We look forward to your continued support; and we will continue to strive to provide exceptional service in appreciation of your support.

Please contact us should you have any difficulties or questions.