



**GHANA: PUBLIC PRIVATE PARTNERSHIPS (PPP or P3) - Series 1**

**SPECIAL POINTS OF INTEREST:**

- > **Our Corporate Christmas Holidays Greetings**
- > **Series on Public Private Partnerships (Ghana)**
- > **A Comparative Analysis; the old and the new GIPC Acts.**

**INSIDE THIS ISSUE:**

|   |          |
|---|----------|
| <b>Ghana: Public Private Partnerships (PPP/P3) - Series 1</b>           | <b>1</b> |
| <b>The GIPC Act 2013— What's New? (A Comparative Analysis)—Series 1</b> | <b>2</b> |
| <b>The Corporate Immigration Review— Ghana (Series 5)</b>               | <b>4</b> |
| <b>Financial Updates and the Economy</b>                                | <b>6</b> |
| <b>Our Corporate Christmas Holidays Greetings</b>                       | <b>7</b> |
| <b>Notice Of Office Relocation</b>                                      | <b>7</b> |

In 2011, Ghana, through the Ministry of Finance and Economic Planning published the National Policy on Public Private Partnership; indicating Ghana's readiness to embrace private involvement in infrastructure and services for enhanced public services delivery.

Public Private Partnership is at the heart of endeavours to resuscitate Ghana's public services.

This Issue will introduce the concept of PPP; and subsequent Issues of the GT Legal Newsletter will pick through the jargon to explicate the bewildering assortment of private sector participation in the public sector; the merits and challenges of the practice; the risks involved and the potential booby traps for Johnny-come-latelies like Ghana.

Furthermore, later series of this article will emphasise on the need to build the requisite PPP setup while outlining the indispensable building blocks for PPP programmes.

That apart, we will later consider the concept of Private Finance Initiative (PFI) as part of Ghana's P3 arrangements.

Public Private Partnership refers to any venture that ensures cooperation between public bodies, such as government ministries, departments, agencies, local authorities or central government; and private companies.

Proponents of the practice argue that expanding the variety of private public partnerships is the best way to secure the improvements in public services that the public has been calling for. They believe that private companies are more often than not, efficient and better managed than bureaucratic public entities.

In attempting to bring the public and private sector together, Ghana hopes that the management skills and financial expertise and intelligence of the business community will craft better worth for taxpayers.

Developing P3 takes time. Countries pursuing this model must go through the full extent of PPP to reach maturity. Reaching full maturity means going through the three stages of 'immature', 'maturing' and 'matured', according to the degree of sophistication and level of transaction activities.

All developing countries including Ghana pursuing PPPs are at different levels of stage 1. Ghana is economically down, and has weak public sector institutions. Generally, Ghana's private sector is deficient in financial, technical and managerial proficiencies. The country is transitioning from state-subsidised service to more market-based pricing; and her legal and regulatory structures are insufficient.

Therefore, lessons learnt from other PPP programmes must underscore the need to build the necessary building blocks to ensure successful implementation. Building an enabling environment takes time. Ghana's perseverance and long-term commitment are critical to achieving a meaningful paradigm shift. It is important for Ghana to give chary contemplation to structure, process and the earliest steps involved in reforms such as formulation of policy, legal and regulatory frameworks; before undertaking actual projects.

The public authorities need to develop high capacity and P3 skills, and adopt an all-encompassing approach in terms of setting the right economic fundamentals, setting up the suitable legal and regulatory framework, and vitally, sustaining political commitment.

Among other things, Ghana must develop systems to manage and monitor P3 contracts and ensure compliance. That apart, it is equally necessary to safeguard credible, independent, transparent and speedy dispute resolution mechanisms to ensure justice, equity and fairness.

Ghana, as a tenderfoot, needs to learn from the rich experience of trailblazers and best practices recognised internationally; as well as use disciplined approach to guide us in methodically and thoroughly instituting the requisite building blocks that will ensure effective and efficient execution of the objectives of Ghana's Public Private Partnership programmes.

*To be continued: please stay tuned*

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

The Ghana Investment Promotion Centre Act, 1994 (Act 478) (the “Repealed Act”) has been repealed by the Ghana Investment Promotion Centre Act, 2013 (Act 865) (the “GIPC Act”). The GIPC Act does not depart very much from the Repealed Act but it introduces certain novel provisions. We have identified the crucial novel provisions while looking at the possible effect of their application.

### Application of the Act

#### What is new?

*Section 17 of the Repealed Act provides that the Act does not apply to mining and petroleum . However, under the GIPC Act, section 4(1) provides that an enterprise in which foreign participation is permitted under the Act shall after its incorporation or registration and before commencement of operations be registered with the Centre.*

#### What does it mean?

Under the new GIPC Act, the scope of application has been broadened to cover all sectors, including mining and petroleum enterprises. In effect, it is mandatory for all companies to register with GIPC irrespective of the sector of operations or business.

### Governance:

#### The Governing body of the Centre – Section 5

#### What is new?

*Section 5 of the GIPC Act provides that the governing body of the Centre is a Board consisting of ;*

- a chairperson;*
- the Governor of the Bank of Ghana or a representative of the Governor not below the rank of Deputy Governor;*
- the Director-General of the National Development Planning Commission;*
- a representative of the Ministry of Trade not below the rank of Deputy Minister;*
- a representative of the Ministry of Finance not below the rank of Deputy Minister;*
- the Chief Executive Officer of the Centre; and*
- four other members appointed from outside the Public Service at least two of whom are women and one nominated by the Private Enterprise Federation.*

*The Repealed Act under section 4 provides that “The governing body of the Centre is a Board consisting of ;*

- the chairman;*
- the vice-chairman;*
- the chief executive of the Centre, and*
- five other members at least three of whom are persons selected from outside the public services.*

#### Introduction of a Technical Committee – Section 11

*The Technical Committee comprises:*

- a. two representatives of the Centre including the Chief Executive Officer;*
- b. one representative, not below the rank of Director or analogous grade, of*
  - (i) the Finance Ministry;*
  - (ii) the Ghana Revenue Authority;*
  - (iii) the Bank of Ghana;*
  - (iv) Environmental Protection Agency;*
  - (v) Ghana Ports and Harbours Authority;*

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

- (vi) National Communications Authority;
  - (vii) Registrar-General's Department;
  - (viii) the Lands Commission;
  - (ix) the Ghana Immigration Service;
  - (x) the National Development Planning Commission; and
- c. One representative of the private sector nominated by the Private Enterprise Federation.

### What does it mean?

Section 11 of the GIPC Act introduces a Technical Committee which shall among others, advise on the process and procedures to facilitate the acquisition of permits and licences and obtaining exemptions and access to utility services; advise on the appropriate tax regimes; provide feedback on practical experiences and assist in the resolution of the operational challenges of investors; and provide technical information on the investment opportunities, regulations and policies for the purpose of attracting and retaining foreign direct investment in Ghana.

## Revised Capital Requirements

### What is new?

The minimum foreign capital requirements for enterprises with foreign participation have been amended under section 28 of the GIPC Act as follows:

- a. *a joint venture with a partner who is a citizen, requires a foreign capital of not less than \$200,000.00 in cash or capital goods or a combination of both by way of equity participation and the citizen partner, must have not less than 10 per cent participation in the joint enterprise. Under the Repealed Act, the capital requirement was \$10,000.00 and there was no requirement for the citizen partner to hold a certain percentage.*
- b. *a wholly owned enterprise by a non-citizen requires a minimum foreign capital of \$500,000.00 in cash or capital goods or a combination of both by way of equity capital. Under the Repealed Act, the minimum capital requirement was \$50,000.*
- 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?

In the past, the thresholds of foreign currency requirements were low at all levels. The old GIPC Act was liberal in this respect. However, the key consideration underpinning the new Act in this regard is that if it is talking about attracting investment in this day and age and also be competitive, then, Ghana should be thinking about millions and billions of United States dollars and attracting the high-net worth companies into Ghana. Companies therefore need a lot more equity capital to meet the investment thresholds as required by the new Act.

*To be continued; please stay tuned.*

THE CORPORATE IMMIGRATION REVIEW-GHANA SERIES 5: BY MR PAA KWESI HAGAN  
[Chapter 14, The Corporate Immigration Review 4th Edition (Law Business Research Ltd)]

## V. INVESTORS, SKILLED MIGRANTS AND ENTREPRENEURS

As foreign direct investment is an integral part of Ghana's economic policy the government has created an enabling legal environment, by passing laws that encourage foreign investment. Foreign investors intending to invest in Ghana can opt to register a wholly owned limited liability company, a joint venture with a Ghanaian partner or a branch office in Ghana at the Registrar General's Department under the relevant laws. If approved, the enterprise is issued a Certificate of Incorporation and a Certificate to Commence Business.

### **i. Ghana Investment Promotion Centre**

The GIPC Act established the GIPC under the Office of the President, and it is responsible for promoting investment in all sectors of the economy. Thus entities with foreign participation must register with the GIPC and satisfy the provisions of the Act. Sector-specific laws

further regulate banking, non-banking financial institutions, insurance, fishing, securities, telecommunications, energy and real estate. The GIPC Act provides the following in respect of the minimum capital requirement of non-Ghanaians in any enterprise:

*a.* in a joint enterprise with a Ghanaian partner, the minimum capital requirement is \$200,000 or its equivalent in capital goods;

*b.* in a wholly foreign-owned enterprise, the minimum capital requirement is \$500,000 or its equivalent in capital goods; and

*c.* in the case of a trading enterprise irrespective of whether it is wholly or partly owned by a non-Ghanaian, the minimum capital requirement is \$1 million and the enterprise shall be required to employ at least 20 skilled Ghanaians.

Some benefits result for business entities that register with the GIPC. These include immigrant quotas and other investment guarantees.

Also, Ghana's investment laws protect investors against expropriation

and nationalisation. Thus a person who owns the capital of an enterprise shall not be compelled by law to surrender that interest in the capital to any other person.

Moreover, regarding disputes, where the investor and the government fail through discussion to reach an amicable settlement, the aggrieved party has the option to submit the dispute to arbitration.

### **ii Skilled migrants**

Ghana does not have a skilled migrant policy; however, companies are allowed to recruit skilled migrants with specialised skills not readily available on the Ghanaian market. Skilled migrants are issued work permits, usually valid for three to four years, and these specialised skills are expected to be imparted to the Ghanaian workforce during this period.

## VI. OUTLOOK AND CONCLUSIONS

Ghana's efforts discussed above have paid off tremendously, with Ghana being recognised by the recent World Bank 'Doing Business 2014' report as the best place for doing business in the ECOWAS region. With the

CONTINUED: THE CORPORATE IMMIGRATION REVIEW-GHANA SERIES 5: BY MR PAA KWESI HAGAN [Chapter 14, The Corporate Immigration Review 4th Edition (Law Business Research Ltd)]

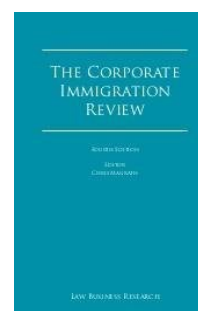
difficult times during last year, where most countries did not show good growth levels because of the global economic downturn, Ghana had an impressive economic growth rate of provisionally 7.4 per cent. Ghana is rated as one of the most attractive locations for doing business in Africa. The nation offers many attractions to the foreign investor among which are; a stable political environment, a sound macroeconomic policy, a competitive labour force, free trade zones where goods traded with other countries are exempt from customs and laws, and immediate access to all ECOWAS markets.

However, if Ghana wants to maintain this enviable outlook, it must place greater emphasis on, and heighten scrutiny of, its immigration compliance practices. Currently, the country lacks a comprehensive immigration policy to facilitate the management of migration. As a result, migration issues are still marginalised. For example, the country cannot boast of a border management

system to control the influx of illegal immigrants. These illegal immigrants enter or leave the country through unauthorised routes thereby making it difficult to obtain any information on them. Moreover, some nationals of ECOWAS member states enter the country as short-term immigrants but often stay beyond the mandatory 90 days because the measures in place to monitor them are not that stringent. In addition existing data on immigrants is not updated or easily accessible. In instances where such data is available, it does not permit a meaningful analysis simply because the characteristics of immigrants are not provided. Ghana therefore needs a strong and effective immigration service to secure our borders and frontiers, and so ensure that immigrants comply with our residence and employment laws.

Despite these shortcomings the government in collaboration with the Ghana Immigration Service recognises that adopting the best practices in immigration control seen in other advanced jurisdictions is essential if we are to protect borders and regulate and monitor the activities of foreigners in relation to employment and

residency. As a result, the Ghana Immigration Service has recently initiated the development of a centralised electronic visa and border control system to promote and improve intelligence sharing between officials of the Service and other security agencies. Immigration authorities will therefore be able to supervise automated passport inspection and track border-crossing events using data captured by the system. This means there will be an improvement in visa and permit processing times, improved but faster registration of border crossing from border residents, and an overall improvement to Ghana's external and internal security through a secure visa-issuing process. This will ultimately meet the current and future needs of the Ghana Immigration Service, as well as improving the quality of service they offer to the public.



**The Corporate Immigration Review, 4th Edition.**

## FINANCIAL UPDATES AND THE ECONOMY

### **Budget**

The 2015 budget was read in November by the Finance Minister Honourable Seth Terkper and it included several notable highlights. Key points included a targeted inflation of 11.5 percent in 2015 and a medium term budget deficit of 3.5 percent of GDP by 2017. Seth Terkper also revealed that the government will impose a special petroleum tax of 17.5 percent and continue its temporary freeze on the hiring of public sector workers as part of measures aimed at reducing a stubbornly high budget deficit.

Concerning the budget deficit, Ghana aims to narrow its budget deficit to 6.5 percent of GDP in 2015, from a projected 9.6 percent in 2014, as it seeks a financial assistance deal with the IMF.

Economic growth is also expected to sharply decline to 3.9 percent in 2015 from an expected 6.9 percent in 2014 mainly as a result of falling commodity prices and fiscal challenges the country is currently battling with. The 3.9 percent (GDP) projection for 2015 is disappointing, especially when you weigh this against the fact that Ghana's economy was growing at around 8 percent at one time not so distant. Nevertheless, markets would welcome the lower 2015 GDP target figure because previous figures were overly-optimistic. Factoring in the IMF, Ghana faces a very tough situation. There is no room for slippage on these already pretty stretching targets.

Finally on the budget, the Finance Minister intimated that the 2015 budget of the government of Ghana will be updated following conclusion of negotiations with IMF.

### **Oil**

It was revealed in November that the government is seeking a joint venture with Saudi petroleum giant, Petro-Saudi, to perk up the operations of Tema Oil Refinery (TOR). The arrangement, when successful, would revamp the workings of TOR and ensure the effectiveness and efficiency of the refinery, Honourable John Jinapor,

Deputy Minister of Energy and Petroleum announced this on the floor of Parliament. Crude prices have generally been falling consistently for the past two months and Brent crude in November fell to hit the lowest in more than 4 years at 69.11/ BBL.

Still on oil related happenings in November, Standard & Poors said it had lowered its credit rating for British oil and gas explorer Tullow Oil after it announced a review of its African business which would increase its exposure to Ghana. The recent sharp decline in oil prices put further pressure on Tullow's profits outlook, S&P said, after it cut its long term corporate credit rating for Tullow to "BB-" from "BB". Tullow Oil has recently announced potential adjustment in its investment plans, which could increase Tullow's exposure to Ghana. We consider that this represents a rating constraint as confirmed by the rating agency in its statement.

### **Gold**

AngloGold Ashanti has confirmed in November that 3,100 employees of the company have been retrenched in the past two years. Currently, the company has 1,300 full-time employees and 1,100 third-party contractors at the Obuasi Mine.

The Executive Vice-President in charge of Sustainability at AngloGold Ashanti, Mr. David Noko said the retrenchment exercise was an announced intention of the company to place the mine on limited operations, while a comprehensive feasibility study was completed by next year.

Upon the completion of the study, the mine would become highly mechanized and productive and could produce seven million ounces of high grade gold and provide an additional 20 million ounces of gold resource Mr. Noko revealed. "For many years, this national treasure and world-class ore body has delivered well below its potential, making it imperative that it undergoes a systematic change to allow it to deliver significant and sustainable contribution to all stakeholders," Mr Noko said. He said although the company had, over the past decade, contributed in excess of \$577 million in corporate taxes, royalties, dividend, customs duties and employee taxes to the economy, the lower gold price and worsening operational challenges required the current measures. Meanwhile gold prices significantly dropped reaching USD 1,167 per ounce at the close of Novem-

ber. The bearish oil prices and rise of the US dollar rates heavily affected gold prices. The yellow metal, now, appears less lucrative for investors as compared to the USD and major European currencies.

### **Economy**

Ghana's economy, which grew by 6.7% in the first quarter of the year, is facing debt sustainability challenges, as the government keeps contracting more loans to undertake development projects in the country. The country's total public sector debt stock has risen from GH¢51.9 billion or 55.5%, of the Gross Domestic Product (GDP) as at December 2013 to the current figure of GH¢ 65.7 billion (57.3% of GDP).

Contrary to the debt figure put up by the Central Bank, the International Monetary Fund (IMF) says Ghana's public debt has even crossed the 60% mark level, which will make it difficult for government to service these debts on time. In its latest 'Fiscal Monitor' report, it revealed that Ghana's public debt would hit a little over 70% of the country's total economic output by 2015, warning that when the country's debt exceeds 60% of its total economic value, economic stability would be threatened. "Further stress might arise from Ghanaian banks repaying dollar loans taken out during 2013, and there are potential risks of further dollar outflows if the Bank of Ghana (BoG) were unable to roll over swap facilities and loans," Fitch noted, concerning Ghana.

Addressing the media in Accra in November, the BoG indicated that preliminary fiscal data from January to September 2014 indicate that both revenue and expenditure were below their respective targets for the period. The shortfall in revenue was however lower than the shortfall in expenditure. Total revenue and grants realized was GH¢17.7 billion (15.4% of GDP) falling short of the target of GH¢18.4 billion (16% of GDP). The shortfall in government receipts was partly due to lower import volumes, decline in commodity prices, particularly gold on the world market, and the slowdown in economic activity arising from energy challenges.

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## GLOBETROTTERS LEGAL

### Snail Mail:

P.O. Box DS 1712  
Dansoman Estates  
Accra, Ghana

### Location:

No. 8  
Adembra Road  
East Cantonments  
Accra, Ghana

### Phone:

0302 278 9497

### E-mail:

info@globetrotterslegal.com

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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

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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 CHRISTMAS HOLIDAYS GREETINGS

Remembering special people at Christmas fills our hearts with joy.

We wish all our numerous clients, partners and cherished readers, a joyous holiday season and a New Year filled with peace and happiness.

May your holiday season be all wrapped up with cheer and filled with celebration for the

New Year.

With sincere appreciation for your confidence in us, loyalty and good will, we wish you all the delights and pleasures of this holiday season.

At this holiday season, our thoughts turn gratefully to all of you who have made our progress

possible. It is in this spirit that we say **THANK YOU** and best wishes for the holidays and **HAPPY NEW YEAR.**



## 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](mailto: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](http://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.