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**ASSESSMENT OF THE VIABILITY OF PPPs AND SUB-NATIONAL
LENDING IN GHANA**

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List of Acronyms

BOG:	Bank of Ghana
CA:	Contracting Authority
DAs:	District Assemblies
DMTDP:	District Medium Term Development Plan
GSGDA 2010- 2013:	Ghana Shared Growth and Development Agenda, 2010 – 2013
GOG:	Government of Ghana
IFC:	International Finance Corporation
IFF:	Infrastructure Finance Facility
MDAs:	Ministries, Divisions and Agencies
MAs:	Metropolitan Assemblies
MMDAs:	Metropolitan, Municipal and District Assemblies
MOFEP:	Ministry of Finance and Economic Planning
NDPC:	National Development Planning Commission
NIP:	National Infrastructure Plan
PAU:	PPP Advisory Unit
PDF:	Project Development Facility
PFA:	Project and Financial Analysis Unit
PID:	Public Investment Division
PMU:	Project Management Unit
PPIAF:	Public Private Infrastructure Facility
PPP:	Public Private Partnership
SME:	Small and Medium Enterprises
SOE:	State Owned Company
SPV:	Special Purpose Vehicle
SNTA:	Sub National Technical Assistance
TDC:	Tema Development Corporation
VGS:	Viability Gap Scheme

1. Introduction

1.1 Background information

Within its Medium Term Development Policy Framework (DMTDPF) and the Shared Growth and Development Agenda, 2010 – 2013 (GSGDA), the Government of Ghana highlighted the constraints in mobilizing the needed financial and technical resources to meet the rising cost of financing the infrastructure deficit. Hence, it was the objective of the MTDPF to actively promote Public-Private Partnerships (PPP) to address the financing and capacity issues and ease the burden on the budget.

In pursuit of the above in June 2011, the Ghanaian Government issued a policy and it is preparing a law that establishes the criteria and procedures to provide public sector institutions with guidelines in engaging in public-private partnerships (PPPs). The main objective of the policy is to implement infrastructure projects and improve the capacity of services provision.

As a follow up, a World Bank Mission visited Ghana early in 2012 to assess the legal and practical feasibility of an effective participation in PPPs at the sub-national level of the Government (Metropolitan, Municipal and District Assemblies (MMDAs) and SOEs) and the possibility that private commercial banks currently operating in Ghana, can provide non sovereign financing to such PPPs.

The Mission was financed through a generous Sub National Technical Assistance (SNTA) grant. The Sub-National Technical Assistance (SNTA) program was launched in 2007 under the Public Private Infrastructure Facility (PPIAF) and it helps **sub-national entities to access market-based finance without sovereign guarantees**. The program is aimed to improve the borrowing capacity of local governments and utilities by providing financing for credit ratings, creditworthiness enhancement programs, assistance in the preparation of financing without sovereign guarantees, and for knowledge generation and dissemination.

The objective of the Mission is to produce a summary of the available information on local governments and financial markets in Ghana, and identify potential infrastructure investments that could later be supported directly or indirectly by the International Finance Corporation (IFC) sub-national window, such as with bank guarantees, non sovereign loans, equity or other means. The Mission also reviewed the legal framework for financial operations of SOEs. The report will be shared with all the stakeholders to agree on principle on the best options available and which of the projects could be proposed as a pilot and be supported by additional resources.

Ghana is a lower middle income country that has a recent and impressive economic growth. There has been a rapid urbanization of major cities like Accra, Tema, Sekondi-Takoradi, Kumasi, Cape

Coast and Tamale due to a high rural to urban migration and the over concentration of jobs in the main cities and towns. The Government has recognized the evolving challenges of this rapid process of urbanization taking place. The Government has enacted a national policy of decentralization which has been issued recently by the Central Government and supported directly by the National Development Planning Commission as well as with a programmed of budget transfers to the District Assemblies Common Fund (DACF). The challenge of the metropolitan urban centers is then how to develop infrastructure and municipal services that would satisfy the needs of their citizens and would be sustainable both in finding the financial resources for the investment, operations and maintenance of public works.

The decentralization policy (Act 462, 1993) seeks to strengthen local development, with a transparent implementation using composite budgeting, so central government functions can effectively be transferred to a local level. As this policy is supported by major Development Partners with financing toward these very useful policies, the larger metropolitan areas are challenged with urban needs, such as lack of water and sanitation services, public illumination, traffic solutions, development of markets and parking.

Finally, the assessment also look at State Owned Enterprises (SOEs), in which the Government of Ghana is a shareholder, as many of these arrangements remained from the privatization of state owned companies in the last decades and also from newly formed companies. In short, when SOEs have a minority stake from the Government of Ghana, and the company is incorporated and registered as a Ghanaian enterprise, these companies do operate under commercial law and their financial obligations are not required to have a sovereign guarantee.

1.2 The District Assemblies (DAs)

Ghana is divided into a hundred and seventy (170) DAs. The Local Government Act distinguishes DAs by population size, namely Metropolitan Assemblies (MAs) which have more than 250,000 inhabitants; Municipal Assemblies which have more than 95,000 inhabitants; and District Assemblies which have more than 75,000 inhabitants). Of the 170 DAs, six (6) have Metropolitan status (Accra, Tema, Kumasi, Sekondi-Takoradi, Cape Coast and Tamale,) and 24 have municipal status.

The highest political authority in the district is the District Assembly who has deliberative, legislative and executive powers and their main functions include the formulation and execution of plans, programs and strategies for the effective mobilization of the resources necessary for the overall development of the district, and the levying and collection of taxes, rates, duties and fees.

Each District Assembly must have a District Chief Executive (or Mayor) who is appointed by the President with the prior approval of not less than two-thirds majority of members of the Assembly. The Mayors are responsible for the day-to-day performance of the executive and administrative functions of the District Assembly. An Executive Committee of a District Assembly is

responsible for the performance of the executive and administrative functions of the District Assembly.

For every District, there is an administrative center (city or town), with satellite communities of urban, semi-urban or rural areas in the surrounds. The Metropolitan Assemblies are almost entirely urban and the Municipal Assemblies are also largely urban although they have substantial rural or semi-rural communities. The District Assemblies are the least urbanized, characterized by few towns or cities and rural communities.

The MMDAs in Ghana have a major problem of several years of under-investment and under-maintenance in basic infrastructure. Private lending for municipal projects in Ghana is almost totally absent, weak, ineffective and it has many constraints. The Mission thus assessed the structure, legal framework and borrowing capacity of the Metropolitan Areas, with an objective to understand the pattern of projects, private sector participation, and involvement and finance mechanisms. Until the issuance of the new decentralization policy, the local governments have not been empowered to initiate projects of significant impact on the quality of life of their population. It is expected that under the new policy framework, local governments acquire the capacity to initiate a process of infrastructure improvements of their cities that will contribute to an orderly expansion of metropolitan areas.

It is important to recognize that law in Ghana imposes some restrictions on the financial management of Local Governments, thus the pressure for the Local Government is how to generate revenue that can be channeled to attend the increasing local needs derived from the urbanization process.

Table 1: MMDAs in Ghana by geographical region

REGION	METROPOLITAN AREA ASSEMBLY	MUNICIPAL ASSEMBLY	DISTRICT ASSEMBLY
Greater Accra	2	6	2
Ashanti	1	6	20
Eastern		6	15
Western	1	2	14
Central	1	6	10
Brong Ahafo		7	15
Volta		3	15
Upper East		2	7
Upper West Region		1	8
Northern Region	1	1	18
TOTAL	6	40	124

Source: Ministry of Local Governments and Rural Development

The DAs in the ten (10) regions of Ghana and their geographical distribution is shown in the Table 1, above. The DAs are body corporate and they have a perpetual succession with a common seal that may be sued in its corporate name. They may acquire and hold movable and immovable property and may dispose of the property and enter into contractual arrangements or any transactions¹. The functions of the DAs are as follows:

- Overall development of the district through the Regional Coordinating Council
- Present Development Plans to the NDPC for Approval
- Preparation of budget and District Plans for MOFEP approval
- Formulate the District Plans and mobilize resources for their implementation
- Initiate programs for infrastructure, municipal works and services
- Implement approved projects through joint development

1.3 Municipal Authorities and District Assemblies interviewed

The Mission interviewed and researched the MAs and the TDC below:

1.3.1 Accra Metropolitan Assembly (AMA)

With an estimated population of about 3 million in a built up area of 400 sq. km, the AMA is comprised of 60 members representing eleven (11) Sub-Metropolitan District Councils and a Metropolitan Chief Executive. The latter just like other Metropolitan Executives is nominated by the President and approved by at least two-thirds of the members of the District Assembly. The City of Accra shows a strong urbanization pattern typified by moderate and scattered densification in the inner city core, involving the replacement of residential by commercial users, and uncontrolled and low density peripheral growth. AMA engages communities and NGOs locally identified as the “Private Sector” and development partners in the implementation of small projects such as markets, car parks and garages.

1.3.2 Sekondi-Takoradi Metropolitan Assembly (STMA)

The Sekondi -Takoradi Metropolitan Area occupies the south-eastern part of the Western Region. The population of STMA is estimated at 410,000 covering an area of about 385 sq km. The city is confronted by weak infrastructure and services provision and a rapid pace of urban sprawl. STMA has undertaken joint ventures from the private sector in terms of Corporate Social Responsibility (CSR) programs but not as a business relationship. Example of those projects include an engineered landfill facility at Sofokrom at the cost of GHC\$2.536 million; Shippers Roundabout jointly funded by the Assembly, Tullow Oil Company and its Jubilee partners at the cost of

¹ Other Government level approvals may be required

GHC\$500,000 as well as a slaughterhouse. The Assembly has already signed a Memorandum of Understanding (MOU) with two companies for the construction of the Takoradi market. They also have planned bridges and flyovers to link the central business area to ease vehicular and human traffic.

1.3.3 Tema Development Corporation

Tema Development Corporation (TDC) was set up in 1952 as an endowment of 63 square miles of land for the development of Tema Township. It functions under Legislative Instrument 1468 of 1989. Its functions include: a) To plan, layout and develop the Tema area; b) Construct roads, public building and markets; c) Prepare housing schemes and develop industrial and commercial sites; d) Provide public utilities such as sewerage and street lights; and e) Manage its rental units, the central sewerage system, planning and leasing plots for private and large-scale real estate development. All the land transactions by TDC are on leasehold basis for a period of 60 years with an option to renew for additional years. In case of serviced residential lands and houses, the lease terms differ between Ghanaians (80 years) and Non-Ghanaians (50 years). Land within TDC is usually free of claims and comes with a title which allows for borrowing in the mortgage market and if a housing project is developed by TDC, it usually comes with a warranty of 6 months after completion of the units.

Currently, the TDC has obtained authorization to hire consulting services to review the original master plan that served to guide the city development. The review of the plan and new proposals for changes will take around 12 months.

2. The Institutional Aspects of Non sovereign lending and Municipal Financing

2.1 Constitution of Ghana (1992)

Ghana is a unitary state with multiparty democracy. Government is divided in three different branches: The Executive, The Legislature (Parliament) and The Judiciary.

The Executive includes the President, the Vice-President, the Council of State, the Cabinet, the National Security Council and the National Development Planning Commission. Parliament has a unicameral structure with 230 seats. The Members of Parliament are directly elected by universal adult suffrage, for a term of four years. The Judiciary consists of the Superior Courts of Judicature, comprising the Supreme Court, the Court of Appeal and the High Court and Regional Tribunals, and the lower courts.

2.2 The Executive Branch

The President is the Head of State, Government and Commander-in-Chief of the Armed Forces. He is directly elected by universal adult suffrage requiring more than 50 per cent of the votes. The executive authority is vested in the President who can perform said authority either directly or through officers subordinated to him.

The Cabinet which consists of the President, the Vice-President and no more than nineteen Ministers of State, assists the President in the determination of the general policies of the Government.

The National Development Planning Commission (NDPC) consists of a Chairman appointed by the President in consultation with the Council of State, the Minister of Finance, other ministers and public officials, including one representative of each Region. The NDPC responds to the President and advises on development planning policy and strategy. Among other things, the NDPC is authorized to monitor, evaluate and co-ordinate development policies, programs and projects.

2.3 Financial Rules

Under the Ghana Constitution, the public funds shall be: (i) the Consolidated Fund, which is basically comprised of all revenues or other monies raised or received for the purposes of, or on behalf of the Government, and other monies raised or received in trust for, or on behalf of the Government, and (ii) the Contingency Fund which is basically comprised of monies voted for the purpose by Parliament. Monies in any fund by whatever name called, established for the purposes of payment or repayment whether directly or indirectly, may so be used. The guidelines and rules for the operation of the funds referred to in i) and ii) above, are developed by the Financial Administration Act of 2003. As explained in the following section, the legal framework applicable to GOG's contracting debt is very detailed as it involves parliamentary approval and sovereign guarantees.

One month before the end of the financial year, the President shall present to Parliament the estimates of the revenues and expenditure of the GOG for the following financial year. The estimates of the expenditure of all public offices and public corporations, **other than those set up as commercial ventures**, must be included in the Appropriations Bill, as approved by Parliament.

The Constitution mandates that each local government unit should have a sound financial base and people in the service of local government shall be subject to effective control of local authorities who have the mandate to afford people with the opportunity to participate in their own governance.

The Constitution creates the **District Assemblies Common Fund (DACF)** which shall annually receive no less than 5% of the current revenue of the GOG. The amounts must be used by the DAs for development, and paid in quarterly installments applying a formula approved by Parliament. Each DA must appoint a DACF Administrator whose functions and tenure are prescribed by law.

2.3.1 Financial Administration Act

Under the Financial Administration Act (Act 654, 2003), MOFEP is responsible for the development and implementation of the country's macroeconomic framework and fiscal policy, and within this framework it should coordinate the international and inter-governmental financial and fiscal relations. All the GOG's institutions entering in loan agreements with a foreign or local lender require an authorization of the Parliament prior to the disbursement of the loan. This authorization is needed for the financial operation to be registered as public debt and considered as a legal obligation of the GOG. When a foreign loan is required to finance the execution of a given project, MOFEP must give support to the executing agency through the loan negotiations and contracting procedures. If the executing agency has not located a source of funding for the investment project, MOFEP should do this work. MOFEP issues every fiscal year, a set of guidelines to be applied by MDAs to the budget formulation process. The guidelines include criteria for financial facilities utilization. MDAs have to include in their budget proposals for the next fiscal year, all new investments to be made and their financing, as projected amounts that will be obtained from loan disbursements and also payments due to foreign loans that have to be made using proceedings from the Consolidated Fund.

Contracts of foreign loans granted to MDAs are signed by the lender and MOFEP. The signed contracts must receive parliamentary approval and then they constitute sovereign liabilities of the GOG. The loan proceedings are disbursed and then transferred by MOFEP to the executing government agency in the way agreed with the lender. The same procedure applies to MMDAs when the project execution does not involve a PPP arrangement.

2.3.2 The GOG as a Shareholder

The GOG is the owner of many commercial companies and participate as a shareholder in several others. The range of economic activities where those companies operate is wide, from hotels and financial services to mining, oil and electricity. Some of the shareholding participations remained from the privatization of state owned companies in the last decades and others come from newly formed companies where the GOG decided that a SOE could perform an economic or business function as well or better than a private company.

The rules described in the paragraph 2.3.1 above do not apply to SOEs where the GOG owns minority equity participation as a shareholder and the company is duly incorporated and registered as a Ghanaian enterprise. These companies operate like private businesses under the commercial law and their financial obligations are not sovereign guaranteed nor require any GOG authorization.

In SOEs where the GOG owns a majority stake or is the sole shareholder, the contracting procedure of loans does not include a parliamentary approval because these companies also operate under the commercial legislation and financial deals require approval only from the Board of Directors. This approval is granted on the basis that the Board of Directors approved the investment, its execution will increase the cash flow of the company and the terms and conditions of the loan are competitive.

Normally in a SOE where the GOG is the sole shareholder, investment proposals would begin with the support of a foreign agency that participates in the project process since the early stages and is involved in the financing, especially if the project is related to electricity generation or distribution, gas or oil exploitation or transportation infrastructure given that the amounts of investment involved in that kind of projects exceed the capabilities of the GOG and the local banking institutions. Loans to these companies are made without sovereign guarantee.

2.4 Local Government Act (1993)

Under the Local Government Act, a DA exercises political and administrative authority in the district, provides guidance, gives directions to, and supervises the other administrative authorities in the district. Specifically, a DA is responsible to the overall development of the district ensuring the preparation and submission through regional coordinating council of: (i) development plans of the district to the NDPC for approval, and (ii) budget of the district related to the approved plans to MOFEP, for approval.

A DA should be integrated by the District Chief Executive, one person from each electoral area, the member or members of Parliament (*without voting rights*) from the constituencies that fall within the area of authority of the DA and other persons not exceeding 30 percent of the total membership of the DA appointed by the President in consultation with the traditional authorities and any other groups of interest in the district. The remaining 70 percent of the DA members are elected.

However, the Local Government Act prescribes special provisions for the establishment of Metropolitan Assemblies (MAs). The Local Government Act provides that the legislative instrument establishing a MA shall specify the appropriate and relevant provisions of the Local Government Act that are applicable to the MA in question.

DAs must take the necessary steps and measures to implement approved development plans for the district, initiate and encourage joint participation with any other bodies to implement approved development plans, and promote or encourage other persons or bodies to undertake projects under approved development plans. The DAs have to encourage and support social development in the district, **initiate programs for the development of infrastructure and provide municipal works and services.**

The Executive Committee of the DAs is responsible for the performance of the executive and administrative functions, and is empowered to oversee the administration of the district, develop an approved plan of the units, area and towns and sub-metropolitan districts. The executive committee has five sub-committees to give assistance in attending the citizens and community requirements:

- Development planning;
- Social services;
- Works;
- Justice and security;
- Finance and administration;

DAs are authorized to open and maintain bank accounts for the revenues and any other monies raised or received. DAs may incur the expenditure necessary for the performance of the functions conferred to it by Law, provided the expenditure is included in the approved budget of the district for the relevant year; however, the monies received by a DA from the DACF shall be spent only on projects which form part of the approved development plan for the district.

A DA may raise loans or obtain overdrafts within Ghana of the amounts, from the sources, in the manner, for the purpose and on the conditions approved by MOFEP; however, ***approval is not required where the loan or overdraft does not exceed GHC\$ 20 million and the loan or overdraft does not require a guarantee from the Central Government.***

2.5 District Assemblies Common Fund Act (Act No. 455, 1993)

The District Assemblies Common Fund (DACF) is comprised of the monies allocated by Parliament and any interests and dividends accruing from investments of said monies. The allocation by Parliament cannot be less than 5% of the current revenues of the GOG. The monies distribution is based on a formula, as approved by Parliament.

The law mandates that the President, acting in consultation with the Council of State and with the approval of Parliament, appoints the DACF's Administrator. This public official holds office for a period of four years and can be re-appointed.

The DACF's Administrator is responsible to annually propose to Parliament the formula for the distribution of the DACF resources to the DAs. Once approved, he or she must manage and distribute the resources among the DAs. Investment of DACF's funds is allowed, prior approval of MOFEP.

MOFEP and the Administrator of the DACF determine the category of expenditure of the approved development budget of DAs that must be met out of the amounts received from the DAFC.

2.6 National Development Planning System Act (Act 480, 1994)

The NDPC has the role of the national coordinator of a decentralized national planning system of development, which comprises the District Planning authorities, Regional Coordinating Councils, Ministries, Departments and Agencies and the NDPC itself.

Within the planning process, NDPC has legal authority to regulate the decentralized national planning system via legislative instruments and guidelines, which can include time and procedures for the submission of development plans to the NDPC.

The Law mandates that any District Planning authority must prepare the district development and settlement structures plans, ensuring the full participation of the local community, and carrying out studies in development planning and other related matters. Full participation of the community is ensured by conducting public hearings on any proposed development plan where the views expressed by the participants must be considered. NDPC has the authority to issue guidelines prescribing the manner in which the public hearings shall be conducted.

The District Planning Coordinating Unit (DPCU) is responsible among others, for advising and providing secretariat for the District Planning Authority, as well as formulating and updating the components of a district development plan. The Regional Coordinating Council coordinates the plans and programs of the District Planning Authorities within the region and harmonizes the plans and programs with national development policies for consideration and approval by NDPC. The Regional Coordinating Council receives advice from the Regional Planning Coordinating Unit.

NDPC prescribes the format and content of development plans for the districts, ministries and sector agencies. The agency also issues approved development policies as directed by the President for the guidance of the public and private sectors. The President is empowered by this law to consider and may approve such national development plans, policies and strategies as proposed by NDPC.

2.7 Assessment of DAs current capabilities on planning

The planning process is not simple or straightforward. The local governments need to have the ability and capability to assume all the new responsibilities, not only to manage the transferred resources but to structure sound and reasonable projects to solve their communities' needs in an agile, transparent and effective manner. This requires structural changes in the ways of doing things, internal capacity building for planning, structuring, executing, supervising projects capabilities and put in place of accountability mechanisms.

Another relevant issue is that local governments must implement adequate measures to become financially stable and assure their ability to resolve the needs of their communities or at least generate the necessary income from collecting tariffs, rates or taxes to focus on the main requirements of the citizens. A more efficient tax collection system should be put in place to assure that citizens and commercial entities are paying the correct amount or even paying some of the fiscal obligations. A revision is also needed on the actual tolls, duties, rates and taxes the local government charges for the purpose of broadening the tax in benefit of the citizens and financial stability of the local government.

The DACF involves a significant amount of public resources transferred to local governments and it should be an effective mechanism of bringing infrastructural development to cities, for which purpose the GOG should grant flexibility in the guidelines for disbursement and utilization of the DACF proceeds and at the same time, local governments need to assure transparency and accountability in the disbursements and utilization of DACF financial resources.

3. The Project Generation Process

The government planning system in Ghana is organized as a decentralized process that initiates at the district level of the political division of the country. The preparation of the district development plan (DMTDP) should be funded by the DAs. The legal framework for the planning process is given by Acts 479 and 480 and the corresponding authority is the NDPC which advises the President of Ghana on matters related to economic development policies. The district planning authorities established by the LGA Act 462 are in charge of the preparation of district development plans, carrying of studies regarding economic, social, spatial and environmental issues of development and for the mobilization of human and physical resources for the district development.

The development plan proposal should be submitted to a public hearing within the district stakeholders, with the purpose of receiving opinions, views and observations, which shall be considered. Each district assembly submits its respective development plan (DMTDP), once

approved by the DAs, to a regional planning council, which is an instance of coordination and harmonization of the district plans between them and with national objectives, for their integration into a regional development plan which is then sent to NDPC for integration to the national development plan.

DMTDP contents must be associated to the GSGDA I 2010-2013 thematic areas, which are:

- Ensuring and Sustaining Macroeconomic Stability;
- Enhancing Competitiveness in Ghana's Private Sector;
- Accelerated Agriculture Modernization and Sustainable Natural Resource Management;
- Oil and Gas Development;
- Infrastructure, Energy and Human Settlements;
- Human Development, Productivity and Employment;
- Transparent and Accountable Governance.

The NDPC has issued guidelines to be utilized by the district planning authorities in their medium term planning process for the period 2010-2013. The guidelines are extremely detailed documents that largely explain what the responsibilities, tasks, activities and functions correspond to every participant in the district planning process, which is implemented with the support of the regional planning council. The guidelines include directions to prepare estimated costs of the projects proposed and methodologies to link those costs to the composite annual budget.

At the current state of the planning process no liaison between the DMTDPs and the national budget has been established. The NDPC expects that the medium term plan will be incorporated in the medium term national budget to have the necessary funding allocated, either from the central government revenues, HIPC funds or the DACF as part of the improvement process of local governments financial administration arising from the decentralization policy by devolution issued by the Ghanaian government. The new decentralization policy states that the DACF could reach 7.5% of the central government current revenue, because 5% will be distributed according to a given formula between the districts to finance development initiatives according to DMTDPs initiating in 2012 and compliance with predetermined performance criteria will give the District Assemblies access to a second fund, the District Development Facility (DDF) funded by the cooperating agencies working in Ghana, which is equivalent to an additional 2% - 2.5% of the current revenue.

The NDPC has the responsibility of preparing the National Infrastructure Plan (NIP) which will consist of an inventory of projects that MDAs and MMDAs will implement during the coming years as part of their approved development plans. The NIP will be utilized as the basis for identification of possible PPPs. The NIP has not being completed yet. It is expected that it will take six more months to have all the proposals for infrastructure projects consolidated under one national plan.

4. Summary of Contents of the PPP Policy of the Government of Ghana

4.1 Definition of PPPs

A Public Private Partnership (PPP) is defined as a contractual arrangement between a public entity and a private sector party, with the clear agreement on shared objectives for the provision of public infrastructure and services traditionally provided by the private sector. It is expected that the private party performs delivery of public services and assume the associated risks for a significant period of time, in exchange for a financial remuneration/benefit, subject to compliance with contractual performance criteria, derived either from service tariffs or user charges, or from payment proceedings allocated periodically through the Government's budget (*fixed or partially fixed annuities*).

4.2 Objectives of the PPP policy as stated by the Ghanaian Government

Inter alia:

- Reduce its financial constraints by leveraging public assets and funds, with private sector resources raised from local and international markets.
- Increase availability of infrastructure and services and improve service quality and efficiency of projects.
- Protect the interest of stakeholders: government, end users, affected people, private sector or party.

4.3 Institutional framework for implementation of the PPP policy

Different institutions within the Government of Ghana have responsibilities concerning the implementation of PPP policy. Some of these institutions already exist and the new responsibilities have been added to their current tasks. Other have been created by the policy or specialized in order to have the required capabilities that correct implementation of the PPP policy demands.

These institutional arrangements shall support the following broad functions:

- PPP policy development, dissemination, monitoring and enforcement
- Individual project sponsorship, design, preparation and execution
- Financial management or funded and contingent obligations
- Gate-keeping and approval functions; and
- PPP projects advice, support and promotion

The following are the institutions whose responsibilities are directly related to PPP policy implementation:

4.3.1. MOFEP Public Investment Division

MOFEP-PID is the Government unit serving as the secretariat of the PPPs Approval Committee. It has two divisions in charge of different responsibilities within the PPPs approval process.

The Project and Financial Analysis Unit (PFA) in the Public Investment Division is in charge of the following tasks related to PPP policy implementation:

- To ensure coordinated implementation of the key public investment policy measures;
- To strengthen coordination of the whole capital budget process and strategic overview of the NIP and the PPP program;
- To provide advice on institutional, legal or regulatory framework, economic and financial reforms and capacity building issues affecting public investment and establish and agree on standards and criteria for project preparation, screening, ranking and selection including PPP's to all ministries, departments and agencies;
- To enforce PPP institutional and legal framework, regulations and procedures;
- To apply screening and selection criteria on large and medium scale projects;
- To coordinate and guide government negotiating teams for large public investment projects including PPPs.
- To develop and prepare draft internal framework, regulations and guidelines of the PPPs Approval Committee;
- To review PPPs and joint venture proposals and to advise the Minister on the merits and the strategies of PPPs procurement or joint ventures;

The PPPs Advisory Unit (PAU) which is responsible for:

- Provide support and add value to other public offices in the identification, preparation of feasibility analysis, structuring, negotiations and procurement of PPP services;
- Build professional and technical capacity among public sector stakeholders to lead the implementation of a PPP project from start to finish;
- Promote Ghana's PPPs policy in order to encourage the use of PPPs in public investment finance; and,
- Assist public stakeholders in understanding approval requirements and process for PPPs and develop necessary documents for review.

4.3.2 PPP Approval Committee

It is established for the purpose of considering requests by contracting institutions to undertake PPPs and it is the approving authority for PPPs within the limits related to the contract amount, established by the policy. The Approval Committee chairman is the Minister of Finance and Economic Planning and its composition involve the participation of other Ministers², the Chairman

² Other members of the PPPs Approval Committee are the Minister of Justice and Attorney General, the Minister of Trade and Industry and the Minister of the contracting entity/Head of the contracting authority.

of the NDPC and the Chief Executives of the Ghana Investment Promotion Center and the Public Procurement Authority.

4.4 Phases of PPP Approval Process

- a. The Contracting Authority (CA) that identified a project with PPP potential should submit a written project concept note and a solicitation letter for the project to be registered as such by the Public Investment Division of MOFEP, informing the expertise it has to proceed with the project and appointing a project officer and a transaction advisor, if required.
- b. A pre-feasibility study must be submitted, making a business case from the alignment between its strategic objectives and the operational benefits of the project and with the national investment plan and government policy. The study must describe specifically the function to be performed by the private party in substitution of the CA, the state property involved (*if any*) description, actual use and proposed use by the private party, location and a broadly estimated cost of the project.
- c. A written approval of the pre-feasibility study is provided by the Ministry responsible for the sector in which the project will operate through its Project Management Unit (PMU). MOFEP-PID carries in parallel a concurrent review of the pre-feasibility study at this stage.
- d. Subsequently, the CA must undertake and submit to MOFEP-PID, a feasibility study, demonstrating the affordability of the project for the institution and the anticipated value to be achieved through the PPP, providing detailed estimates of viability gap and the need for incentives (*if any*) and explaining its capacity to procure, implement, manage, enforce and report on the PPP.
- e. Financing may be obtained for the feasibility study from the Project Development Facility (PDF). With authorization from MOFEP-PID, the CA could include the cost of the study in its procurement process and pass it later on to the private sector once the PDF enters its operational phase.
- f. Approval for the feasibility study must be given to the CA by the following:

Estimated Cost of the Project	Approval given by
Up to GHC\$ 2,000,000	MOFEP-PID
From GHC\$ 2,000,000 up to GHC\$ 50,000,000	PPP Approval Committee
Above GHC\$ 50,000,000	Cabinet, upon PPP Approval Committee recommendation

Source: National Policy on Public Private Partnership, GOG, MOFEP, June, 2011

- g. Once the feasibility study is approved, the CA must submit the draft procurement documentation to MOFEP-PID, including the draft of the Agreement/Concession. MOFEP-PID revision seeks to ensure consistency between the Public Procurement Act and the PPP procurement procedures and their allowance for the maximum possible use of local content, indigenous SMEs participation and technology transfer.

- h. After the evaluation of bids, the CA must obtain an approval from the corresponding authority according to the PPPs approval schedule for the evaluation report of the bidding process, aimed to demonstrate how the principles of the PPP policy were applied to the evaluation process and how those principles are satisfied by the winning bid. Once the approval is granted, the CA may proceed with the appointing of the winning bid.
- i. Once the procurement process has been concluded, the CA must obtain from the corresponding authority according to the schedule in (f) above, an additional approval on the following aspects of the PPP Agreement/Concession before a final agreement is finalized: that the PPP meets the principles of the PPPs policy, that the CA has the capacity and mechanisms to effectively implement, enforce, monitor and report on the PPP and that a satisfactory due diligence has been completed in respect to matters of the respective competence of the private party and the CA and their capacity to enter the PPP agreement/concession.
- j. If the PPP project involves financial transactions that require Parliamentary approval, it must first receive all final approvals (MOFEP-PID, General Assembly of the MMDAs, Approval Committee and Cabinet) of all the intervening authorities of the PPP policy before the proposal is submitted to Parliament for such approval.
- k. Unsolicited proposals for execution of projects through PPPs must be referred to projects that are not currently on the NIP or not being under consideration by any CA and demonstrates genuine and substantial innovation and support to the national policy. Unsolicited proposals will be considered on a case by case basis.
- l. Responsibility for proper implementation, management, enforcement, monitoring and report on the PPP projects relies in the CA. It is responsible also for measuring outputs, liaising with the private party, resolve disputes and generally overseeing the day to day performance of the PPP agreement.

4.5 PPPs support facilities created by the policy

4.5.1 Project Development Facility

The Project Development Facility (PDF) shall finance upstream investment appraisal, value for money assessments and other feasibility and safeguard studies. It also supports financing of transaction advisory services up to the signing of contractual arrangements. Is conceived as a revolving fund where the winning private party reimburses (*partially or totally*) some of the costs associated to the PPP. Its full operation will take place once the PPP Law is approved by Parliament.

4.5.2 Viability Gap Scheme (VGS)

This is also a fund that is aimed to support projects that are economically justified but not financially viable. The VGS will provide rule-based incentives for PPP projects that are economically/socially justified but not feasible from a financial perspective, without reasonable support for their investments or operation expenses. The utilization of proceeds from this fund could be used to partially finance the investment cost or the operational revenues of a PPP project during a predetermined period of time to facilitate its execution and complete the compensation of the private party or either for the GOG absorbs part of its cost for the same purposes. It is expected that the detailed regulations for this facility establish clear and strong criteria for the use of its proceedings’.

4.5.3 Infrastructure Finance Facility (IFF)

The IFF will be a fund/company established by the GOG, to provide long term financial resources at a fixed rate, in local currency to the private sector party in PPP projects. The IFF nor has been established or designed, but the plan is that it will operate within the BOG. Technical details of its design and funding are still pending of legal proposals, financial considerations and final decisions from the Parliament during the law proposal discussion for approval.

4.6 General Highlights

The issuance of the PPPs policy arises from the Government of Ghana’s Coordinated Programme of Economic and Social Development Policies 2010-2016 and the revised GSGDA 2010 - 2013. The PPPs policy is conceived in that framework as a mean to maximize opportunities to build the required infrastructure that the country needs to support the acceleration of growth from a more diversified scope of economic activities, employment generation and export growth that is aimed to attain the objective of raising the per capita income to US\$ 3,000 in 2020.

GSGDA emphasizes structural transformation of the Ghanaian economy, based in part on industrialization in the agricultural and natural resource sectors. The aggregated cost of meeting the GSGDA’s objectives significantly exceeds Ghana’s projected fiscal space, and the financing gap will guide efforts to identify additional funding and use PPPs to meet infrastructure needs.

The PPP policy principles are broadly consistent with international best practices. Nonetheless it is not clear to all the potential CAs, especially at the MMDAs level, that the partnerships to which the PPP policy is referred to are based on profit joint ventures where the private sector seeks to exploit business opportunities arising from the provision of services currently delivered by a public sector agency, ministry or municipality. The concept is well understood by MOFEP-PID authorities but it still has to be clearly transmitted to the lower levels of the government structure.

The National Infrastructure Plan (NIP) is still in preparation by the NDPC which is in the process of putting together the different MDAs and MMDAs plans and it is estimated that it will take about six more months to have it in place. Nonetheless, an interested private investor could make consultations with the concerned government institution within his sector of interest, to find out which projects are in the pipeline for the next two years.

In terms of having the PPP policy operational, MOFEP-PID and PFA are operating as well as the PPP approval Committee. The projects currently being analyzed have a national dimension; i.e.: Accra-Takoradi Road; Tamale-Accra-Kumasi-Takoradi Airports Improvements; Tema and Takoradi Ports Rehabilitation and a hospital expansion and diagnostic center. Most of the projects involve participation of foreign investors and the utilization of large amounts of financial resources for investment.

At the institutional level or at the MMDAs level, the PMUs have not yet being appointed and no specialized technical capabilities have been acquired to identify opportunities for PPP projects, even though MOFEP is providing assistance in training and is prepared to advise the rest of the institutions interested in executing projects trough PPPs. MOFEP has an agreement with the Commonwealth Business School for an annual training program specialized in PPPs for 30 people starting in 2012.

Other facilities, like the PDF, VGS and IFF are still not operational. Guidelines are not being written yet and probably they will start operations until the PPP law is approved, which is expected to take place by the end of the year. Given that those facilities involve the utilization of public funds it is not likely that they will enter in an operational phase based on a “policy pending law” as is the PPP policy current state.

The PPPs approval process is long, delayed and not truly a sample of the decentralization policy the Government has promulgated. MOFEP retains a considerable amount of decision power not only for PPPs with national reach but for projects whose reach is limited to a determined MMDA. This is understandable from the point of view of the lack of experience and capabilities at the MMDAs level for project identification, structuring and executing PPPs, but if a straightened process is not provided, the required capabilities will never be acquired by the MMDAs. Technical and financial assistance must be provided in order to the MMDAs could identify infrastructure investment opportunities within the PPPs policy.

According to an Attorney General Department representative, the contracts signed by the GOG with private parties under the PPP policy are binding and enforceable. Nevertheless if an investor feels that additional security is needed, the contract should be subject to Parliament approval. Contract formats will depend on the kind of project, the financial structure, etc.

The special purpose vehicle selected for the joint venture has to be incorporated under the Ghanaian law, or registered as a Ghanaian company. A branch or subsidiary of a foreign company cannot be a participating private party in a PPP contract.

The GOG is part of international agreements of arbitration. Currently, there are some arbitration processes ongoing, related to investment projects, 2 in the roads sector, 1 in energy and 1 in telecomm.

Some examples of associations between the public and private sector currently operating in Ghana are presented in the table below.

Table 2: Types and examples of joint ventures between central government/DAs and the private sector

TYPE OF PROJECT	LOCATION	PRIVATE SECTOR	TYPE OF JOINT VENTURE
Landfill	STMA	STMA/Tullow Oil	CSR
Takoradi Thermal Power Station	Takoradi	IFC, Taqa, SMO	Business Partnership
Sanitation	AMA/STMA	AMA/STMA/Zoomlion	MOU
Ghana Student Hostel	Legon, Accra	Ecobank/Legon	Business Partnership
Parking Garage	AMA	SSNIT	
Railway	Sekondi-Takoradi	Ghana Railway Development	Business Partnership

Source: Based on information from the Ministry for Local Governments and Rural Development

4.7 PPPs at the sub-national level

The main sources of revenues for local governments in Ghana are property rates, business rates and market tolls. It is widely recognized that Metropolitan Assemblies (MAs) have an underutilized collection potential that could be used to increase tax base and reduce evasion. Ghana has an important challenge to improve the personal identification and property registration systems, not only for tax purposes but also for improved and increased access to financial services and much more modern payment systems, which could make an important contribution to lower business costs and facilitate economic activity.

MAs actual fiscal revenue is utilized mainly to finance operational costs. Given their limited capabilities to collect revenue, the MAs are always way behind the infrastructure needs of the cities in building new facilities as in the maintenance of existing public infrastructure and their capacity to provide solutions to basic services provision, traffic problems, transportation and housing, land development, road maintenance and health and education facilities is very low. The situation is worsening by the accelerated process of urbanization that Ghanaian cities are going through.

Under the current Local Governments legislation³, MAs are able to raise loans or obtain overdrafts within the country's territory up to GHC\$ 20,000,000 which at the current exchange rate (*GHC\$ 1.60 x US\$ 1.00*) amount to a US\$ 12,500,000 approximately without prior approval from MOFEP.

³ Act 462, section 88, Power to borrow

Besides, the Public Procurement Act establishes a limit on MAs of GC\$ 2,000 for procurement purposes, which implies that until the issuance of the PPP policy in June 2011, almost all the municipal infrastructure projects had to be implemented at the central government level.

In the Mission's opinion, the presence of an entrepreneur showing immediate interest to work as a business partner of the MAs to develop a PPP project was clearly absent. It is apparent that doing business with MAs in the infrastructure sector is considered to be a non-comfort zone due mainly to the lack of confidence, unreliable effective payment mechanisms and also, uncertainty with respect to transparent bidding and selection processes; hence, the private sector is currently not interested in doing business with MAs directly. Notwithstanding, the private sector could be very interested in doing business with MAs under a PPP, provided payment mechanisms are improved and efficient controls are setup in order to ensure an acceptable level of transparency in the selection of the MAs business partner. PPPs have come forward as a feasible and practical method to develop municipal infrastructure in many different sectors such as energy, transportation, roads, water and sanitation. Local governments have the challenge of properly identify projects suitable to be implemented through a PPP contractual arrangement and present them in a feasible, transparent and attractive way to the private sector so it is willing to undertake the responsibility for the effective provision of the needed services and infrastructure. The creation of an initial pipeline of projects involves modeling potential projects, carrying assessments of their potential costs and benefits and ranking them based on their priority and likelihood of success.

An essential condition to the use of PPPs as a way for the development of a better municipal infrastructure is the local authorities' awareness that project proposals have to be built around the idea of a potential profit which is what makes the joint venture attractive for potential private investors. Training is essential at all levels of the decision making process to influence positively the outcomes of a PPP program. This process cannot live aside the private sector, which together with local governments should identify, prioritize, and gather consensus for a PPP project pipeline.

Obtaining assistance of international advisors could help shorten the learning curve in PPPs for the local authorities, meanwhile receiving their advice on the structuring, bidding and contracting stages of a pilot project is an excellent way to benefit from their experience in similar markets and other projects. In some cases legislation could be essential to promote a PPP endeavors but many operations have taken place using existing procedures or even a specific contractual agreement based on international and local regulations. Another key issue is long term financing. If it is difficult for the financial intermediaries to obtain long term funding, credit enhancement facilities are an alternative to create incentives for foreign or local capital markets participants or foreign investment agencies to provide financial resources in adequate conditions for the project to be successful.

Local governments must be conscious that PPPs in infrastructure are about risk sharing, value for money, public service provision and long-term partnerships. Smaller projects have great potential,

because of lower costs and potentially less complex structuring needs. Small-scale projects, once designed, can be repeated and may be used to expeditiously provide services in poorer and/or rural areas.

The MAs limitations on borrowing or procurement detailed before do not apply to the SPV constituted under a PPP contract, so MAs participation in PPP projects will be regulated almost exclusively by the policy, the details of authorizations obtained during the approval process of the project and the contract documentation as approved by the corresponding authorities within the policy schedule. The intervening authorities see the approval process as supplementary to the regulations governing local governments' financial management.

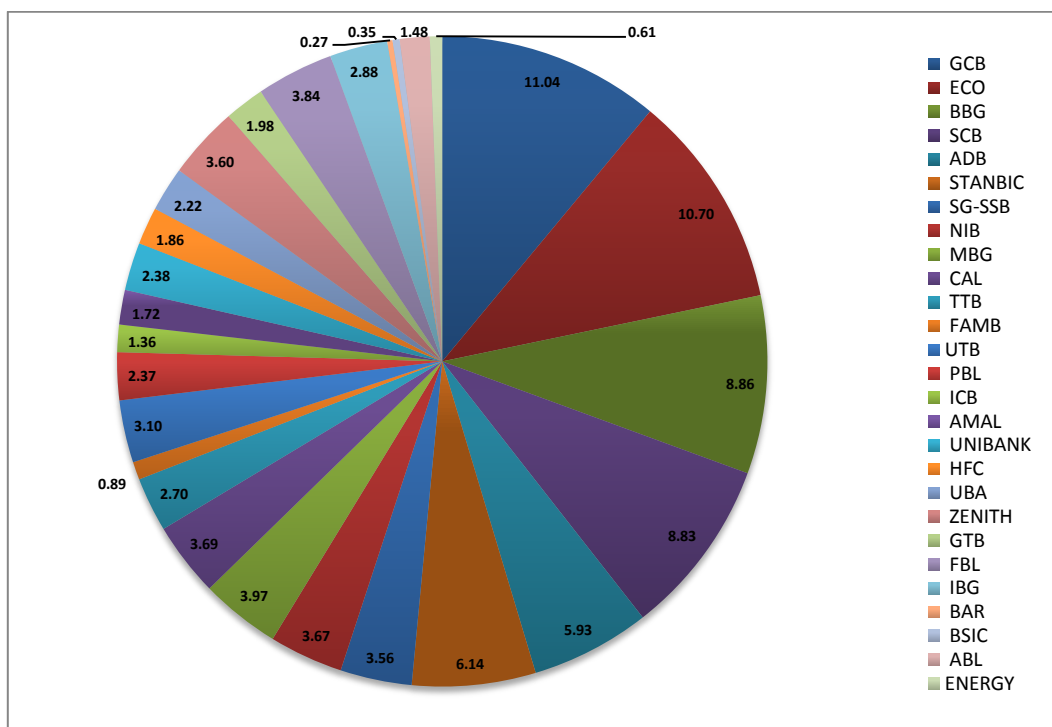
5. Commercial Private Banking System

5.1 General information

There are 26 private commercial banks in Ghana. Foreign shareholding reaches 50% of banks' ownership. 13 are subsidiaries of foreign banks and account for 51% of total assets. British banks dominate the system but there are important presence of African owned banks, especially from South Africa, Nigeria and Togo. The state has controlling interests in five banks⁴ accounting for 29 percent of the banking system assets, including two banks with shareholding participation owned by the Bank of Ghana (BOG).

The BOG is in charge of the supervision and regulation of the banking system and is currently in the process of strengthening its capabilities of in site supervision by conducting a training program of recently hired supervisory staff and conducting external audits to have a better assessment of the system's risk profile.

Figure 1: Ghana: Private Banks market participation by total assets (in % of system total assets)



Source: BOG website, positions at December 2011.

⁴ The GOG ownership in Banks is a result of direct and indirect shareholding; the latter through the BOG and the SSNIT and the state controlled pension fund.

As seen in the figure 1 above, 51% of total assets are concentrated in 6 of the 26 banks in the market and the remaining 49% is distributed between 20 institutions. The number of banks appears to be too high which causes that none of the players achieves a significant market share. This may represent a constraint on the capacity of individual banks to finance new investment projects of a medium to large size. In a situation like that and given the country's property regime and people's identification constraints referred before, banks would tend to concentrate risk taking on investments in GOG bonds and financial services delivery to corporate clients already in the market.

Credit portfolio and overdrafts represent around 40% of banks' total assets. Investments in government bonds and BOG bills reach 26% of total assets. Interest income is 81% of total income and approximately 67% of the banks' financing is provided by the depositary base. Loan portfolio is concentrated, with 31% of total credit invested in the financial and commercial sectors, 21% in services, 9% in agriculture and mining and 8% in construction, meanwhile less than 5% of the loan portfolio is oriented to consumption credit. Difficulties in access to credit facilities and high financial transaction costs were widely mentioned in all the interviews that the Mission sustained with private (*non-bank*) and public sector representatives, in particular when referring to long term financing.

As a result of an growth in GOG domestic debt arrears in 2010, the banking system loans to government contractors fell also in arrears, generating an increase in banks' Non Performing Loans (NPLs) portfolio which reached 17.6% of total loans, having direct consequences on the cost of credit that remained high in spite of the recent inflation reduction in 2011, as the banks tried to compensate increased loan loss reserve requirements on profits by maintaining a wide interest rate margin. According to banking sector representatives, high credit risk is exacerbated by time consuming, legally complex, costly, and unpredictable procedures for taking collateral and enforcing creditor rights. In the past, government domestic arrears have been a recurring source of vulnerability but banks continued to rely on implicit government guarantees when lending to government service providers which causes loan concentration and is a signal of poor risk management practices.

Cash utilization for payment transactions is rather common in Ghana. Confidence in the banking system is being built after a financial crisis and the arrival of many new institutions to the banking sector during the last ten years. Also, retail services are limited by the lack of credit information services, IT limitations, identification and clients location problems and illiteracy in rural areas.⁵ Mobile financial services are rendered through an alliance between the telecomm companies and the banks⁶ but only 86.1 of each 100 Ghanaians have a telephone⁷.

⁵ http://www.nca.org.gh/downloads/Mobile_Voice_Subscription_trends_December_2011.pdf

⁶ The law requires telecomm companies to have strategic alliances with at least 3 banks to deliver mobile financial services

⁷ http://www.unicef.org/infobycountry/ghana_statistics.html

During 2011, increased economic activity, payment of most of the government arrears, increased flows of foreign direct investment and remittances combined with a higher demand for credit and an effort for deposit mobilization, situated the banking system in a highly liquid and profitable position. The minimum capital requirement is currently GHC\$ 60 million which appears to be low for an economy the size of Ghana's.

5.2 Banking system financing to Local Governments

Local government representatives interviewed for this report reported not having financial relationships with the banking system. It appears that financial dealings between the banks and the Ghanaian government are mostly conducted at a national level, except for occasional overdraft facilities granted to MAs by some of the banks. The lack of interest of engaging in a financial relationship with the local governments could be attributed to banks' perceiving local governments as higher credit risk counterparts, due to:

- a) The executive director of MAs is subject of removal by the President at any moment which could cause important changes in the policies and management of the assemblies and could affect their cash flow and payment capacity; and,
- b) The existing legal limitations to debt contracting and procurement affecting MAs.

5.3 Regulations on Banks' Government debt investments

Investments on GOG and BOG financial instruments are weighed as zero risk investments for purpose of capital adequacy ratio calculations. For this same purpose, direct loans and overdrafts to the central government are treated as zero risk assets. There is no special classification for investments in municipal financial instruments and they are considered equal to central government financial instruments only when having sovereign guarantee. MAs have never issued bonds or other financial instruments in the past. Direct loans and overdrafts to local governments (MMDAs) are treated as commercial loans for regulatory purposes.

5.4 Banking system loan conditions

Representatives of public and private sector alike considered the interest rate as an obstacle for investment in Ghana due to its current level, considered high in relation to inflation. All the interviewed spoke of interest rates for local currency loans of around 25%, with inflation rates of 8.5% at the end of 2011. Also, the lack of long term funding availability was mentioned as an important restriction to infrastructure projects development.

Banking system representatives explained to the Mission that local market financial culture is short term oriented. Commonly, deposits are contracted at a six months term in the Ghanaian market and the sources available for long term funding are lines of credit from bilateral agencies or foreign financial institutions. They attributed the interest rate inflexibility to issues like the relatively high number of institutions, high costs of funding, difficulties to efficiently and effectively exercise creditor rights, absence of credit bureaus, problems to properly identify and locate debtors, etc. Nevertheless, the degree of competition appears to be adequate but limited to corporate clients. Retail banking services are delivered at a limited extent, mainly due to the issues mentioned above. Personal banking consists mainly of consumption loans and mortgages. Consumption loans are normally contracted at a one year term and mortgage loans can be up to a 30 years term, depending on the source of financing. There are many microfinance companies and non bank lenders that charge extremely high interest rates.

5.5 Banking system interest in financing PPPs at a sub-national level

All private banks interviewed expressed interest in the possibility of participating in PPPs at a sub-national level. The fact that the SPV that would be constituted under a contractual arrangement between the MAs and the private party is a legally independent entity, cash generating, where the revenues could be ring fenced through an escrow account or a trust, where the financier serves at the same time as the depositary or the trustee, is very attractive for banks. They also considered that the amounts involved in the financing of a project at a sub-national level would be more accessible to them, given their possibilities of funding, than a loan to an executing entity in a project with a national reach or coverage that would require very large amounts of financing.

There are no special provisions within the banks' risk policies that could prevent them from considering providing financial facilities for a PPP. The risk assessment would be conducted on the basis of the capacity of the project to generate revenue and on the security of the contract signed between the parties. Some of them mentioned credit enhancement facilities as a desirable condition that would facilitate the approval process of the operation, specifically partial guarantees from an international financial organization that could contribute in improving the risk qualification of the loan.

The possibility of intermediation of funds provided by a third party, namely a foreign bank, a foreign government fund or a multilateral agency was also mentioned and received a favorable reaction. Some of the banks, especially where the capital comes from a foreign source were also interested in cooperating with the process of identifying potential investors once the projects suitable to be implemented under a PPP have been identified.

6. Conclusions and Recommendations

- As to the question of whether or not it is possible to implement projects, such as PPP projects, at the sub-national level, or with SOEs, with non sovereign loans in Ghana, it is our opinion that under the current legal framework, PPP projects can be implemented at such level.
- MAs actual fiscal revenue is utilized mainly to finance operational costs. Given their limited capabilities to collect revenue, the MAs are always way behind the infrastructure needs of the cities in building new facilities as in the maintenance of existing public infrastructure and their capacity to provide solutions to basic services provision, traffic problems, transportation and housing, land development, road maintenance and health and education facilities is very low. The situation is worsening by the accelerated process of urbanization that Ghanaian cities are going through.
- Under the current legal framework, PPP projects for the sub-national sector of Ghana, can be carried out, for which purpose the 2011 PPP Policy establishes different approval procedures, depending mainly on the total estimated project costs.
- Investment projects of SOEs can be financed without sovereign guarantee, even if the GOG is the only owner.
- The National Infrastructure Plan (NIP) which will consist of an inventory of projects that MDAs and MMDAs will implement during the coming years will be utilized as the basis for identification of possible PPPs. The NIP has not being completed yet. It is expected that it will take six more months to have all the proposals for infrastructure projects consolidated under one national plan.
- The PPP policy principles are broadly consistent with international best practices. Nonetheless it is not clear to the MMDAs, that the partnerships to which the PPP policy is referred to are based on profitable joint ventures where the private sector seeks to exploit business opportunities arising from the provision of services currently delivered by a public sector agency, ministry or municipality. The concept is well understood by MOFEP-PID authorities but it has to be still transmitted clearly to the lower levels of the government's structure.
- At the MMDAs level, the PMUs have not yet being appointed and no specialized technical capabilities have been acquired to identify opportunities for PPP projects, even though MOFEP is providing assistance in training and is prepared to advise the rest of the institutions interested in executing projects through PPPs.

- The PPPs approval process is long, delayed and not truly a sample of the decentralization policy the Government has promulgated. MOFEP retains a considerable amount of decision power not only for PPPs with national reach but for projects whose reach is limited to a determined MMDA. This is understandable from the point of view of the lack of experience and capabilities at the MMDAs level for project identification, structuring and executing PPPs, but if a straightened process is not provided, the required capabilities will never be acquired by the MMDAs. Technical and financial assistance must be provided in order to the MMDAs could identify infrastructure investment opportunities within the PPPs policy.
- The presence of an entrepreneur showing immediate interest to work as a business partner of the MAs to develop a PPP project was clearly absent. It is apparent that doing business with MAs in the infrastructure sector is considered to be a non-comfort zone due mainly to the lack of confidence, unreliable effective payment mechanisms and also, uncertainty with respect to transparent bidding and selection processes; hence, the private sector is currently not interested in doing business with MAs directly.
- Local governments have the challenge of properly identify projects suitable to be implemented through a PPP contractual arrangement and present them in a feasible, transparent and attractive way to the private sector so it is willing to undertake the responsibility for the effective provision of the needed services and infrastructure.
- Obtaining assistance of international advisors could help shorten the learning curve in PPPs for the local authorities, meanwhile receiving their advice on the structuring, bidding and contracting stages of a pilot project is an excellent way to benefit from their experience in similar markets and other projects.
- Legal limitations on borrowing or procurement that apply to MAs, are not applicable to the SPV constituted under a PPP contract, so MAs participation in PPP projects will be regulated almost exclusively by the policy, the details of authorizations obtained during the approval process of the project and the contract documentation as approved by the corresponding authorities within the policy schedule.
- The fact that the SPV that would be constituted under a contractual arrangement between the MAs and the private party is a legally independent entity, cash generating, where the revenues could be ring fenced through an escrow account or a trust, where the financier serves at the same time as the depositary or the trustee, is very attractive for banks.

- There are no special provisions within the banks' risk policies or the regulation that could prevent them from considering providing financial facilities for a PPP. The risk assessment would be conducted on the basis of the capacity of the project to generate revenue and on the security of the contract signed between the parties.

Recommendations

1. MAs capacity to identify projects, with PPP potential, or which can be financed with non sovereign debt, should be reinforced through hiring specialized technical assistance. An expert should analyze the project pipeline of the six MAs in Ghana, implement a detailed and thorough assessment and discuss every alternative with the MAs authorities at the highest level. The expert should help the MAs to: i) select the projects suitable to be implemented as a PPP, ii) to prepare the concept paper with them; and iii) make the corresponding presentation to MOFEP-PID in order to have a short list of projects registered as potential PPPs.
2. Once the projects with PPP potential are duly identified and registered, MAs should receive transaction advisory services. The scope of these services goes from the feasibility study of the project to preparation of the contract draft documentation and accompaniment of the bidding process, help on financial structure and negotiation of contracts. We recommend that the IFC provides these services in order to raise the needed confidence in potential private investors.
3. The MAs should appoint their PMUs human resources as soon as possible. The personnel assigned to the PMUs should participate actively, learning by doing, along the technical expert and the transaction advisory service company, to acquire dexterities and capabilities for the MA on a permanent basis.
4. It is advisable that MAs start their PPP experience with a pilot project of a modest dimension and low complexity. Once the experience is being acquired, MAs can enter in more complex and ambitious contractual arrangements.
5. The World Bank and the IFC should consider establish some form of credit enhancement facilities to encourage private banks participation in PPPs financing at the MAs level of the Government.
6. It is advisable that the process of discussion and drafting of the PPP Law, which is expected to take place in 2012, do not unnecessarily limit the faculties and rights given to the

MMDAs by the policy. We recommend giving this process the necessary following and participation in assurance of its due treatment to MAs.

ANNEX 1: List of Meetings/Persons interviewed

AB& David Law Firm

Mr. David Osofu-Forte; Chief Executive

ACCRA Metropolitan Assembly

Hon. Alfred O. Vanderpuije; Metropolitan chief executive.

Mr. Sam Ayeh-Datey; Metro Coordinating Director

Agricultural Development Bank

Ms. Bridget L.N. Kaminta; Manager, Treasury Sales

Mr. George Baah Danquah; Manager, Treasury Department

Attorney General Department

Ms. Ama Banful; Chief State Attorney

International Finance Corporation, Sub-Saharan Africa Region

Mr. Edwin Munene; Investment Officer, Global Financial Markets Department

Ms. Belinda Amoah; Associate Investment Officer

Ms. Iony Tiana Rasamoela; Financial Analyst

Ministry of Finance and Economic Planning

Mrs. Magdalene Ewuraesi-Apenteng; Director, Public Investment

Mrs. Gladys Ghartey; Head, World Bank Unit

Ministry of Local Government and Rural Development.

Nana Dr. Bright Oduro-Kwateng; Chief Director

Micheletti, construction private firm

Mr. Jimmy Castagna; Managing Director

Mr. Thomas F.K. Senya; General Manager Administration

Ing. Mustapha Wahabi; General Manager Construction

National Development Planning Commission

Dr. Isaac Frimpong Mensa-Bonsu; Technical Advisor

Mr. Adjei-Fosu Kwaku; Deputy Director, Plan Coordination Division

SEKONDI-Tekoradi Metropolitan Assembly

Captain Richard Cudjoe; Metropolitan Chief Executive

STANBIC Bank

Mr. Samuel N.S. Botchway; Head Investment Banking Coverage; Corporate Investment Banking.

Standard Chartered Bank

Ms. Angela Adu-Awah; Associate Director, Global Corporates, Origination & Client Coverage, Wholesale Banking

Mr. Edem Dzakpasu; Director & Regional Head, Financial Institutions, West Africa

TEMA Development Corporation

Mr. Joe Abbey; Managing Director

TIGO; Ghana Branch

Mr. Carlos Cáceres; Chief Executive Officer

Mr. Selorm Adadevoh; Head of Mobile Financial Services

ANNEX 2

Figure 2: Example of a PPP organized at the sub-national level

