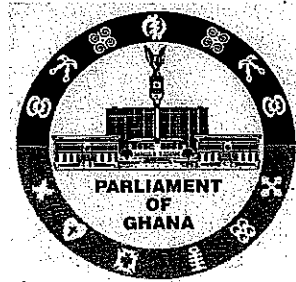


**IN THE FOURTH SESSION OF  
THE SIXTH PARLIAMENT OF  
THE FOURTH REPUBLIC OF GHANA**



**REPORT OF THE JOINT COMMITTEE ON FINANCE  
AND CONSTITUTIONAL, LEGAL &  
PARLIAMENTARY AFFAIRS**

**ON THE**

**PUBLIC PRIVATE PARTNERSHIP BILL, 2016**

**JULY 2016**



Acc No: 165301

Class No: BR/PPP/16

## **1.0 INTRODUCTION**

1.1 The **Public Private Partnership Bill, 2016** was presented to Parliament and read the first time on **Tuesday, 17<sup>th</sup> May, 2016**. In accordance with Article 106(4) and (5) of the Constitution and Order 169 and 179 of the Standing Orders of the House, the Rt. Hon. Speaker referred the Bill to the Joint Committee on Finance and Constitutional, Legal & Parliamentary Affairs for consideration and report.

1.2 The Committee had in attendance at its Meetings, Ms. Mona Ellen Quartey, Deputy Minister for Finance, and her Officials from the Ministry. Also in attendance were Officials from the Legislative Drafting Division of the Ministry of Justice and Attorney-General's Department.

## **2.0 REFERENCE**

2.1 The Committee referred to the following Documents during its deliberations.

- i. 1992 Constitution of the Republic of Ghana
- ii. Standing Orders of Parliament
- iii. National Policy on Public Private Partnership (2011)
- iv. Minerals and Mining Act, 2006 (Act 703)
- v. Public Procurement Act, 2003 (Act 663)
- vi. Lands (Statutory Wayleaves) Act 1963 (Act 186)
- vii. Alternative Dispute Resolution Act, 2010 (Act 798)
- viii. Interpretation Act, 2009 (Act 792)

### **3.0 BACKGROUND**

- 3.1 Experiences all over the world have shown that public infrastructure like roads, electricity, transportation, water and sanitation, seaports and airports, public educational and health facilities and services are essential and directly related to economic output. They are considered pre-requisites for economic growth and development and therefore of paramount importance to every nation.
- 3.2 The provision of public infrastructure and services has typically been considered as the responsibility of governments all over the world and therefore part of their prime mandates. This traditional role is gradually being supplemented with financing and expertise from the private sector as a result of the limited budget resources. Governments have therefore now resorted to new and innovative approaches to the provision and financing of public infrastructure and services with the involvement of the private sector in what is referred to as "**Public Private Partnership**". This partnership is used as a means of leveraging public resources with private sector resources and expertise in order to close the infrastructure gap and also deliver better public services with greater efficiency.
- 3.3 In Ghana, successive governments have rolled out different strategies and policies to salvage the Country from

infrastructure deficit. In its quest to strength and expand the private sector to facilitate the growth of the economy, the Government in 2001, set-up the Ministry of Private Sector Development. Then in 2004, PPP Policy Guidelines were issued to officially integrate the private and public sectors in the national development agenda. The Guidelines were however not operationalised.

3.4 In 2011, a new **National Policy on Public Private Partnership** was launched under the auspices of the Ministry of Finance. The new Policy was harmonised with the PPP Guidelines developed in 2004 to enhance the implementation of PPP in the Country. The Policy sought to provide a clear and consistent process for all aspects of PPP project development and implementation, from project identification, appraisal and selection to procurement, operation, maintenance, performance monitoring and evaluation. The Policy was also expected to enable Government expedite action in the provision of better infrastructure and services through the use of private sector financial, human and technical resources for national development.

3.5 Government in its desire to protect the investments of private entities involved in the PPP and boost investor confidence to improve the quality and affordability of public infrastructure and services, is going beyond the Policy to introduce a

legislation on PPP. Hence the laying of the Public Private Partnership Bill, 2016 in Parliament.

#### **4.0 OBJECT OF THE BILL**

4.1 The Bill seeks to establish a legal framework for the development, implementation and regulation of Public Private Partnership arrangements and projects between public institutions and private entities for the provision of public infrastructure and services.

#### **5.0 OBSERVATION**

5.1 The Committee was informed that private entities involved in PPP in the Country are apprehensive as to how to safeguard their investments due to the absence of legislation. Investors felt that they needed more protection by way of legislation than just the Policy. According to the Hon. Deputy Minister, since the adoption of the PPP Policy in 2011, the Ministry of Finance has registered a total of 93 Projects under PPP, out of which 24 have received different levels of approvals towards commencement and 13 are work in progress. Only 3 have been delivered.

5.2 It was therefore gratifying to note that, provisions have been put in the Bill to encourage private investors to partner Government in the provision of public infrastructure and services. The guiding principles of PPP, including compliance

and safeguards, risk allocation, affordability and sustainability, fairness and transparency, stakeholder consultation and the application of procurement procedures are all documented in the Bill (Clauses 3-8).

5.3 The Committee also noted that, currently, the Public Investment Division (PID) of the Ministry of Finance is spearheading the development of PPP and is responsible for developing the legal, institutional and regulatory framework for the PPP programme. It is also responsible for the issuing of Standardised PPP Provisions and PPP Manuals/Guidelines for effective management of PPP projects. The Ministry together with the World Bank contract expertise to undertake the pre-feasibility and feasibility studies.

5.4 The Bill however establishes an agency to take up the responsibility being undertaken by the PID of the Ministry. A provision has therefore been made in Clause 9 to establish the Ghana Partnerships Agency which will be made up of professionals with the requisite expertise to take up the responsibility for continuity and effective implementation of PPP. The ultimate responsibility of the implementation of the Bill would however be that of the Minister responsible for Finance.

5.5 The Committee again observed that, Clause 22 of the Bill provides for Funds for the proposed agency to be used for its operations, whilst Clauses 26 and 27 establishes PPP Funds to be used for supporting partnership arrangements under PPP. This, in the opinion of the Committee, is a duplication because it will be extremely difficult if not impossible to separate the operations of the agency from the partnership arrangements that the same agency is supposed to make. An amendment has therefore been proposed to delete Clauses 26 to 30 of the Bill on PPP funds and merge the provisions with that of Clause 22.

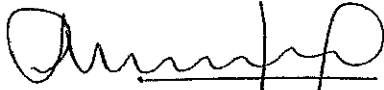
## **6.0 CONCLUSION**

6.1 Public Private Partnership is a contractual relationship that enables the public sector to harness the expertise and efficiencies of the private sector in the delivery of certain facilities and services traditionally procured and delivered by public institutions. It is structured in such a way as to attract huge amounts of investments from the private sector.

6.2 The passage of the Bill would boost investor confidence and foster private sector participation in PPP in the provision of public infrastructure and services.

6.3 The Committee therefore recommends to the House to adopt its Report and pass the Bill subject to the amendments proposed in the Attachment.

Respectfully submitted.



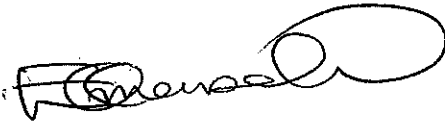
**ROSEMARY ARTHUR SARKODIE**

Clerk, Committee on Finance



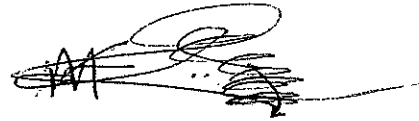
**HON. JAMES K. AVEDZI**

Chairman, Committee on Finance



**ERIC OWUSU-MENSAH**

Clerk, Committee on  
Constitutional, Legal and  
Parliamentary Affairs



**HON. MAGNUS K. AMOATEY**

Chairman, Committee on  
Constitutional, Legal and  
Parliamentary Affairs

*JULY, 2016*



## APPENDIX

### **AMENDMENTS PROPOSED TO THE PUBLIC PRIVATE PARTNERSHIP BILL, 2016**

- i. Clause 1 – Amendment proposed – *Delete* “object” in the headnote and *insert* “objects”.
- ii. Clause 1 – Amendment proposed – Sub-clause (2), line 1, *delete* “object” and *insert* “objects”.
- iii. Clause 1 - Amendment proposed – Sub-clause (2), paragraph (h), lines 1 and 2, *delete* “persons acting on behalf of”.
- iv. Clause 2 – Amendment proposed – Sub-clause (1), paragraph (b), *delete* and *insert* the following:  
“(b) the types of partnership agreements as set-out in the First Schedule;”.
- v. Clause 2 – Amendment proposed – Sub-clause (1), paragraph (e), line 2, *delete* “state-owned enterprises” and *insert* “public authorities” and in line 3, after “justice” *delete* “institutions”. This should apply throughout the Bill.
- vi. Clause 2 – Amendment proposed – Sub-clause (1), paragraph (f), line 2, *delete* “other parties” and *insert* “private entities”.
- vii. Clause 2 – Amendment proposed – Sub-clause (2), paragraph (a), lines 2 and 3, *delete* “for a sufficiently long period of time”.

- viii. Clause 2 – Amendment proposed – Sub-clause (3), *delete* and *insert* the following:  
“(3) Despite subsection (2)(e), where a public authority including the military, police, defence and justice engages an entity to procure goods, works and services through a partnership arrangement, this Act shall apply to that entity”
- ix. Clause 3 – Amendment proposed – Sub-clause (1), *delete* and *insert* the following:  
“(1) A public authority shall ensure that a person assigned a responsibility under this Act”.  
    (a) keeps a record of the decision; and  
    (b) accounts for the decision made.”
- x. Clause 3 – Amendment proposed – Sub-clause (2), line 3, *delete* “affected” and *insert* “interested”.
- xi. Clause 3 – Amendment proposed – Sub-clause (3), line 2, after “authority” *add* “and the private entity”.
- xii. Clause 4 – Amendment proposed – Paragraph (a), line 1, *delete* “comprising” and *insert* “that set out”.
- xiii. Clause 5 – Amendment proposed – Sub-clause (1), paragraph (e), line 1, before “public” *delete* “that” and *insert* “the”.
- xiv. Clause 6 – Amendment proposed – Sub-clause (3), line 3, after “criteria” *add* “prescribed in the Regulations”.
- xv. Clause 9 – Amendment proposed – Sub-clause (1), line 1, *delete* “an Agency” and *insert* “a body corporate”.

- xvi. Clause 11 – Amendment proposed – Sub-clause (1), paragraph (p), *delete*.
- xvii. Clause 11 – Amendment proposed – Sub-clause (1), paragraph (r), *delete*.
- xviii. Clause 11 – Amendment proposed – Sub-clause (2), *delete*.
- xix. Clause 11 – Amendment proposed – Sub-clause (3), *delete*.
- xx. Clause 11 – Amendment proposed – Sub-clause (4), *delete*.
- xxi. Clause 11 – Amendment proposed – Sub-clause (5), *delete*.
- xxii. Clause 12 – Amendment proposed – Sub-clause (1), paragraph (a), *delete* and *insert* "(a) a chairperson with the requisite professional experience".
- xxiii. Clause 12 – Amendment proposed – Sub-clause (1), paragraph (f), line 1, after "Executive" *insert* "Officer".
- xxiv. Clause 12 – Amendment proposed – Sub-clause (1), paragraph (g), after "Executive" *insert* "Officer".
- xxv. Clause 12 – Amendment proposed – Sub-clause (1), paragraph (h), after "Executive" *insert* "Officer".
- xxvi. Clause 12 – Amendment proposed – Sub-clause (1), paragraph (i), *delete* and *insert* the following:

“(i) three other persons nominated by the Private Enterprise Federation, two of whom are women with the requisite professional experience.”

xxvii. Clause 13 – Amendment proposed – Sub-clause (2), paragraph (a), after “Executive” *insert* “Officer”.

xxviii. Clause 13 – Amendment proposed – Sub-clause (2), paragraph (b), line 1, before “member” *delete* “the” and *insert* “a”.

xxix. Clause 13 – Amendment proposed – Sub-clause (3), line 1, after “Executive” *insert* “Officer”.

xxx. Clause 14 – Amendment proposed – Sub-clause (1), line 2, *delete* “times” and *insert* “time” and *delete* “places” and *insert* “place”.

xxxi. Clause 14 – Amendment proposed – Sub-clause (2), *delete* and *insert* the following:

“(2) The chairperson shall, at the request in writing of not less than one third of the membership of the Board convene an extraordinary meeting of the Board at the time and place determined by the chairperson.”

xxxii. Clause 14 – Amendment proposed – Sub-clause (3), *delete* and *insert* the following:

“(3) The quorum at a meeting of the Board is seven members”.

xxxiii. Clause 14 – Amendment proposed – Sub-clause (4), line 1, *delete* “at meetings” and *insert* “at a meeting” and in line 3, after “preside” *delete* “over a” and *insert* “at the”.

- xxxiv. Clause 15 – Amendment proposed – Sub-clause (1), paragraph (b), *delete* and *insert* the following:  
“(b) not be present at, or participate in the deliberations of the Board in respect of the matter.”
- xxxv. Clause 15 – Amendment proposed – Sub-clause (2), paragraph (b), *delete* and *insert* the following:  
“(b) participates in the deliberations in respect of the matter.”
- xxxvi. Clause 16 – Amendment proposed – Sub-clause (1), *delete* and *insert* the following:  
“(1) The Board may establish committees consisting of members of the Board or non-members or both to assist in the performance of the functions of the Board.”
- xxxvii. Clause 16 – Amendment proposed – Sub-clause (2), *delete* and *insert* the following:  
“(2) The quorum at a meeting of a committee is more than one half of the members of the committee”
- xxxviii. Clause 18 – Amendment proposed – Sub-clause (1), *delete* and *insert* the following:  
“(1) The Minister may give policy directives that are consistent with the objects of this Act to the Board and the Board shall comply.”
- xxxix. Clause 18 – Amendment proposed – Sub-clause (3), *delete*.
- xl. Clause 18 – Amendment proposed – Sub-clause (4), *delete*.

- xli. Clause 20 – Amendment proposed – In the headnote, after “Executive” *insert* “Officer”.
- xl.ii. Clause 20 – Amendment proposed – Sub-clause (1), after “Executive” *insert* “Officer”.
- xl.iii. Clause 20 – Amendment proposed – Sub-clause (2), *delete* and *insert* the following:  
“(2) A person qualifies for appointment to the position of Chief Executive Officer if that person has the requisite professional qualification and experience.”
- xl.iv. Clause 20 – Amendment proposed – Sub-clause (3), line 2, after “Executive” *insert* “Officer”.
- xl.v. Clause 20 – Amendment proposed – Sub-clause (4), line 1, after “Executive” *insert* “Officer”.
- xl.vi. Clause 20 – Amendment proposed – Sub-clause (5), line 1, after “Executive” *insert* “Officer”.
- xl.vii. Clause 21 – Amendment proposed – Sub-clause (2), line 2, *delete* “or may give assistance to the Agency”.
- xl.viii. Clause 21 – Amendment proposed – Sub-clause (3), line 2, *delete* “on the recommendations” and *insert* “with the approval”.
- xl.ix. Clause 22 – Amendment proposed – *Delete* and *insert* the following:  
“Funds of the Agency  
(22). (1) The funds of the Agency include
  - (a) moneys approved by Parliament;
  - (b) moneys that may become lawfully payable

to the Fund

(c) donations, grants and gifts; and

(d) any other moneys that the Agency may generate from the activities of the Agency.

(2) The Agency shall, with the approval of the Minister, open a bank account into which moneys received by the Agency for the operations of the Agency shall be paid."

- I. Clause 24 – Amendment proposed – Sub-clause (2), line 1, *delete* "six" and *insert* "three".
- li. Clause 26 – Amendment proposed – *Delete*.
- lii. Clause 27 – Amendment proposed – *Delete*.
- liii. Clause 28 – Amendment proposed – *Delete*.
- liv. Clause 29 – Amendment proposed – *Delete*.
- lv. Clause 30 – Amendment proposed – *Delete*.
- lvi. Clause 31 – Amendment proposed – *Delete*.
- lvii. Clause 32 – Amendment proposed – Sub-clause (1), line 2, *delete* "public" after "of" and *delete* "public" after "and".
- lviii. Clause 32 – Amendment proposed – Sub-clause (1), line 3, *delete* "object" and *insert* "objects".
- lix. Clause 35 – Amendment proposed - Sub-clause (1), *delete* and *insert* the following:

“(1) A public authority may undertake a feasibility study in respect of a potential partnership project that has been registered in accordance with section 34.”

- ix. Clause 36 – Amendment proposed – Sub-clause (1), line 2, after “threshold of a local government authority” *insert* “as set out in the Third Schedule”.
- lxi. Clause 40 – Amendment proposed – Sub-clause (1), line 1, after “may” *delete* the comma.
- lxii. Clause 41 – Amendment proposed – line 3, before “Guidelines” *insert* “the” and in line 4, before “Regulation” *insert* “the”.
- lxiii. Clause 42 – Amendment proposed – Sub-clause (2), line 2, after “are” *insert* “as”.
- lxiv. Clause 42 – Amendment proposed – Sub-clause (4), line 1, after “other” *delete* “person” and *insert* “approval authority as specified in the Third Schedule”
- lxv. Clause 43 – Amendment proposed – Sub-clause (2), line 2, after “authority” *insert* “or a Regional Coordinating Council” then in line 4, after “recommendation” *add* “to the higher authority or the Regional Coordinating Council”.
- lxvi. Clause 43 – Amendment proposed – Interchange the position of sub-clauses (2) and (3).
- lxvii. Clause 45– Amendment proposed – Sub-clause (2), line 3, after “Plan” *insert* “the National Infrastructure Plan,



the Public Investment Plan, the District Development Plan”.

- lxviii. Clause 45 – Amendment proposed – Sub-clause (3), lines 3 and 4, after “with” *delete* “Guidelines or standardised documents or by Regulations” and *insert* “this Act”.
- lix. Clause 46 – Amendment proposed – Sub-clause (3), line 3, after “in the” *insert* “partnership” and after “before” *delete* “the” and *insert* “that”.
- lxx. Clause 47 – Amendment proposed – Sub-clause (4), *delete* and *insert* the following:  
“(4) A partnership agreement shall explicitly provide for  
(a) fair compensation to a private entity in the event of termination of that agreement on account of default by the public authority or expropriation by the Government, and  
(b) fair compensation to a public authority in the event of termination of that agreement on account of default by the private entity.”
- lxxi. Clause 56 – Amendment proposed – Sub-clause (3), line 1, *delete* “Board” and *insert* “Agency”.
- lxxii. Clause 56 – Amendment proposed – Sub-clause (4), *delete*.
- lxxiii. Clause 59 – Amendment proposed – Sub-clause (5), line 2, after “Court” *add* “within thirty days after the receipt of the order or decision”.

- lxxiv. Clause 60 – Amendment proposed – Sub-clause (2), line 2, after “lodge” *insert* “within thirty days”.
- lxxv. Clause 60 – Amendment proposed – Sub-clause (5), line 1, after “public” *delete* “entity” and *insert* “authority”.
- lxxvi. Clause 61 – Amendment proposed – Sub-clause (1), line 3, after “may” *insert* “within thirty days”.
- lxxvii. Clause 61 – Amendment proposed – Sub-clause (2), paragraph (d), *delete*.
- lxxviii. Clause 67 – Amendment proposed – Sub-clause (1), lines 4 and 5, *delete* “the medium” and *insert* “reproduction”.
- lxxix. Clause 68 – Amendment proposed – Sub-clause (5), paragraph (b), line 3, *delete* “fifty” and *insert* “ten”.
- lxxx. Clause 68 – Amendment proposed – Sub-clause (5), Paragraph (b), lines 5 and 6, after “both” *delete* “the fine and term of imprisonment”.
- lxxxii. Clause 70 – Amendment proposed – Sub-clause (2), paragraph (f), *delete* and *insert* the following:  
“(f) audited accounts of the public authorities where available”.
- lxxxiii. Clause 70 – Amendment proposed – Interchange the positions of clauses 70 and 71.
- lxxxiii. Clause 72 – Amendment proposed – *Delete* the headnote and *insert* “General penalty”.

lxxxiv. Clause 72- Amendment proposed – *Delete* and *insert* the following:

**"General penalty**

72. A person who commits an offence under this Act for which a penalty is not provided, is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than two years and not more than four years or to both."

lxxxv. Clause 72- Amendment proposed – *Add* a new provision as new 73 to read as follows:

**"Penalty for non-compliance with orders or directions**

73. A person who fails to comply with an order or directive given under this Act by the Minister or the Agency or an officer authorised by the Minister or the Agency, within the time specified in the order or directive, is liable to pay to the Agency, an administrative penalty of five thousand penalty units and in the case of a continuing failure, to an additional penalty of not more than three thousand penalty units for each day during which the failure continues."

lxxxvi. Clause 73 – Amendment proposed – Sub-clause (1), line 1, after "may" *delete* "on the recommendations of the Agency".

lxxxvii. Clause 73 – Amendment proposed – Sub-clause (2), paragraph (d), *delete*.

lxxxviii. Clause 75 – Amendment proposed – line 23, *add* "Officer" after "Chief Executive" and do same in line 24.

- lxxxix. Clause 75 – Amendment proposed – *Delete* the definition for “Ghana Infrastructure Investment Fund”.
- xc. Clause 75 – Amendment proposed – In the definition of “public private partnership project” after “means” *delete* “an” and *insert* “a public”.
- xc. First Schedule – Amendment proposed – Clause 7, sub-clause (1), line 2, after “public” *delete* “entity” and *insert* “authority”.
- xcii. First Schedule – Amendment proposed – Clause 11, line 4, after “user” *delete* “charges” and *insert* “levies”.
- xciii. First Schedule – Amendment proposed – Clause 12, sub-clause (2), line 4, *delete* “entity” and *insert* “authority”.
- xciv. Second Schedule – Amendment proposed – *delete*.
- xcv. Third Schedule – Amendment proposed – Second Column, Second Row, *delete* “Cabinet/”.
- xcvi. Third Schedule – Amendment proposed – Third Row Second Column, *delete* “/Parliament”.