



# IMPROVING TRANSPARENCY AND ACCOUNTABILITY IN PUBLIC-PRIVATE PARTNERSHIPS

DISCLOSURE DIAGNOSTIC REPORT: GHANA

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# Table of Contents

Acronyms.....	4
List of Figures.....	5
List of Tables.....	5
Acknowledgements.....	6
Executive Summary.....	9
1. Introduction.....	14
2. Transparency and Openness.....	16
3. PPP Experience.....	19
4. Institutional Framework for PPPs.....	21
5. Legal and Institutional Framework for PPP Disclosure.....	26
6. Disclosure in Practice and Key Challenges.....	39
7. Gap Assessment.....	41
8. Recommendations.....	44
9. Key Materials Reviewed.....	49
Annex A: Suggested Text for Disclosure Framework.....	50
Annex A.1: Draft Template for Proactive Disclosure of Projects in Ghana.....	56
Annex A.2: Standard Contractual Provisions.....	59
Annex B: Comparison of World Bank and Agreed Frameworks with Current Practice ..	67

# Acronyms

CA	Contracting Authority
CCSA	Cross-Cutting Solution Area
CSO	civil society organization
DMD	Debt Management Division
DPA	Data Protection Act
ECOWAS	Economic Community of West African States
FoI	Freedom of Information
GIFMIS	Ghana Integrated Financial Management Information System
GSGDA	Ghana Shared Growth and Development Agenda
GWCL	Ghana Water Company Limited
IPP	Independent Power Producer
KIPP	Kpone Independent Power Plant
MDAs	Ministries, Departments and Agencies
MMDAs	Metropolitan, Municipal and District Assemblies
MOF	Ministry of Finance
NDPC	National Development Planning Commission
NIP	National Infrastructure Plan
NPL	National Priority List
OGP	Open Government Partnership
PAC	Public Accounts Committee
PAU	Project Advisory Unit
PFA	project and financial analysis
PFM	Public Financial Management
PID	Public Investment Division
PIM	Public Investment Management
PIMS	Public Investment Management System
PIP	Public Investment Program
PMU	Project Management Unit
PPA	Public Procurement Act
PPIAF	Public-Private Infrastructure Advisory Facility
PPP	Public Private Partnership
RFP	request for proposal
RFQ	request for qualification
RTI	Right to Information
SMEs	small and medium enterprises
SPV	special purpose vehicle

# List of Figures

Figure 1: Number of PPP Projects, by Sector	19
Figure 2: Roles and Responsibilities of Units under the PID	22
Figure 3: Procedures, Tasks, Responsibilities, and Timelines for PPP Projects	25
Figure 4: Elements of the World Bank’s Recommended PPP Disclosure Framework	44

# List of Tables

Table ES.1: Snapshot of Recommended Disclosure	11
Table 1: Key Themes for Ghana’s Disclosure Environment	15
Table 2: Institutional Framework for PPPs	23
Table 3: Disclosure-Related Clauses in the Public Procurement Act, 2003	27
Table 4: Legal Framework for Disclosure and Implications for PPP Disclosure	29
Table 5: Rapid Review and Gap Assessment, by Component	41
Table 6: Suggested Content for a PPP Disclosure Framework for Ghana	46
Table A.1: Summary of Specific Disclosures	51

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# Executive Summary

A World Bank Public-Private Partnerships (PPP) team conducted a study in Ghana between September 2016 and March 2017, using the PPP Disclosure Diagnostic template recommended by the World Bank, *Framework for Disclosure of Information in PPPs*. This study has been consolidated in the form of a PPP Disclosure Diagnostic Report for Ghana. The Diagnostic Report examines the political, legal, and institutional environment for disclosure in PPPs. Based on a gap assessment exercise with key political, legal, institutional and process findings benchmarked against the World Bank Framework, the Diagnostic Report makes specific recommendations to improve disclosure, including a recommended customized framework for PPP disclosure in Ghana.

The findings suggest a move toward greater transparency and openness in all areas of government, with a few new initiatives having been launched in recent years. Ghana ranks as the seventh least corrupt country in Africa, according to the Transparency International Corruption Perceptions Index for 2015. Ghana joined the Open Government Partnership (OGP) in 2011 and has prepared two OGP Action Plans so far, which make substantial commitments to transparency and accountability in governance, including a commitment to adopting Open Contracting and Open Monitoring. Ghana has signed the African Union Convention on Preventing and Combating Corruption, the Economic Community of West African States (ECOWAS) Protocol on the Fight Against Corruption, the ECOWAS Supplementary Protocol on Democracy and Good Governance, the United Nations Convention Against Corruption, and the Extractive Industries Transparency Initiative. However, the Right to Information (RTI) bill, which was one of the government's commitments, could not be passed by the last Parliament. It remains to be seen whether the current Parliament passes the bill.

The government publishes parliamentary proceedings in the Hansard of the Parliament. The [government's information portal](#) currently contains 133 data sets from 25 agencies. In addition, the government has developed [eServices](#) and [ePayment](#) platforms to facilitate the provision of certain services. These platforms remain in an early stage of development. The Ghana Integrated Financial Management Information System is an ambitious initiative for improved recordkeeping, accounting, and transparency in financial management. Many ministries have their own websites with some information, including information on projects.

However, given that most of these initiatives are very recent and still in the process of being institutionalized, their impact in improving disclosure in the PPP space, so far, has not been substantial.

The past decade has seen an increase in interest in the use of PPPs in Ghana, largely driven by the country's requirement for new financing, at US\$12 billion up to 2025.<sup>1</sup> The World

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<sup>1</sup> See <http://www.graphic.com.gh/business/business-news/ghana-is-fifth-most-attractive-to-infrastructure-investors-pwc-report-says.html>.

Bank's Private Participation in Infrastructure Database lists 23 projects that reached financial close over 1990–2014, with 10 projects in the information and communications technology sector and eight independent power producer projects.<sup>2</sup> The Ghanaian Ministry of Finance has highlighted a series of PPP projects as top priorities.

The legal framework to develop and implement PPPs in Ghana is yet to be approved and institutionalized. The main policy document that governs PPPs is the PPP Policy 2011. Although a PPP bill was introduced in the last Parliament, it did not come up for debate and discussion. Meanwhile, other supplementary legislation and policies, including the Public Investment Management (PIM) Policy 2015, the Public Procurement Act 2003, and the Public Financial Management Act 2016, continue to guide the PPP process. The institutional framework for approval of projects consists of the PPP Approval Committee; the General Assembly of the Metropolitan, Municipal, and District Assemblies; the Cabinet; and the Parliament, based on the value of the project.

Ghana's legal and institutional framework for disclosure flows through its 1992 Constitution, which guarantees citizens the right to information through its article 21(1)(f). The PPP Policy 2011 enshrines the general principles of transparency, but explicit guidelines for disclosure were not included in it, as these aspects were to be regulated by future legislations and statutes. The provisions of the RTI bill and the PPP bill have a very direct impact on PPP disclosure, as these provide for proactive disclosure and the elements of PPP information that need to be disclosed, although these are yet to be passed. If passed, the PPP Act would provide for penalties for nondisclosure of information by agencies. Other laws and policies that have a direct impact on PPP disclosure are the Public Procurement Act 2003, which provides a justiciable framework, which, given the absence of a PPP law, applies to PPPs as well; the PIM Policy 2015; the Public Financial Management Act 2016; the Petroleum Revenue Management Act 2011; the Petroleum (Exploration and Production) Act 2016; the Environmental Protection Agency Act 1994; and the Public Utilities Regulatory Commission Act 1997.

However, the few clear provisions available in law and policy are scattered. There is ambiguity on the application of these provisions, and lack of clarity in defining the scope of some of the clauses. There is a clear need for an enhanced PPP disclosure framework for Ghana, in addition to the passage of the RTI and PPP Acts, to bring together the provisions in relevant legislation, policy, and guidelines, and to provide clear guidance to officials.

In practice, there is limited information on PPPs in the public domain. The Public Investment Division maintains on its website a list of PPP pipeline projects with some basic information. The site does not include detailed information on the status of various projects, nor does it include any structured information on the procurement or performance of these projects.

This Diagnostic Report recommends a systematic structure for proactively disclosing information through a customized framework for disclosure in PPP in Ghana. The report

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<sup>2</sup> See <http://ppi.worldbank.org/snapshots/country/Ghana>.

suggests a holistic approach to disclosure through predefined standards, tools, and mechanisms, allowing for increased disclosure efficiency, as outlined in table ES.1.

The recommended design for Ghana follows the World Bank Framework. The design is hierarchical and includes a logical framework that moves from a high-level mandate to disclose toward the basic elements that need to be disclosed. Table ES.1 provides a snapshot of the recommended features of the suggested framework for Ghana.

**TABLE ES.1: SNAPSHOT OF RECOMMENDED DISCLOSURE**

AREA	DESCRIPTION
LEGISLATIVE MANDATE	Legislative mandate to disclose through re-introduction of the RTI and PPP bills, which did not pass in the last Parliament.
DETAILED GUIDANCE	<ul style="list-style-type: none"> <li>Applicability of existing legislation to contracts and project information</li> <li>Elements of disclosure during the various phases of the PPP project process</li> <li>Timelines for disclosure</li> <li>Details of confidentiality provisions</li> <li>Template for disclosure</li> <li>Standard contract clauses</li> </ul>
DISCLOSURE DURING PROJECT IDENTIFICATION AND PREPARATION	<ul style="list-style-type: none"> <li>List of pipeline projects</li> <li>Basic project information</li> <li>Project progress tracker</li> <li>Feasibility study report</li> <li>Environment and social assessment/scoping report</li> </ul>
DISCLOSURE DURING PROCUREMENT	<ul style="list-style-type: none"> <li>Pre-tender: approved pipeline of projects, brief description of project, services, estimated cost, likely sources of revenue, and tentative procurement dates</li> <li>Tender: RFQ, short-listed bidders, RFP, award</li> </ul>
DISCLOSURE FOLLOWING COMMERCIAL CLOSE	<ul style="list-style-type: none"> <li>Basic project information</li> <li>Material risks and allocation</li> <li>Reasons for choice of PPP</li> <li>Financing structure</li> <li>Guarantees, grants, annuity/availability payment schedule, land and asset transfers, and other support; revenue share</li> <li>Tariffs</li> <li>Actual performance against targets, performance failures, links to independent engineer, audit, and SPV reports</li> <li>Termination and handback provisions</li> <li>Renegotiations or changes</li> </ul>

AREA	DESCRIPTION	
CONFIDENTIAL INFORMATION	Areas or elements that could be considered confidential (subject to overarching law and project-specific circumstances) where the competitiveness of the private provider may be jeopardized Exceptions and exemptions to the confidentiality clause	
STANDARD CONTRACT PROVISIONS	Reports, documents, and other information the private provider should maintain and submit to the authority; timelines for submission and disclosure Language on what constitutes confidentiality, format for listing confidential clauses, and clause for disclosure in public interest	
PLATFORM	A single platform is recommended with a user-friendly integrated back end for use by multiple entities, with a hierarchy of roles related to uploading, validation, and disclosure of information; a user-friendly front end with structured content and regular updates to registered users	
TIMELINES	Basic project information	Within 15 days after first approval and updated thereafter with each new milestone and annually
	Project progress tracking	Within 15 days of first approval
	<i>Disclosure of information prior to commencement of procurement</i>	
	Feasibility Study and Environment and Social Impact Scoping Study	Within 15 days of approval of feasibility study and before RFQ
	<i>Disclosure of information during procurement</i>	
	RFQ	As soon as procurement documents are approved for publication
	List of short-listed bidders and evaluation summary report	As soon as prequalification committee takes a decision
	Bid award and evaluation summary report	As soon as decision is approved
	Full RFP	Upon close of bid submissions

AREA	DESCRIPTION	
TIMELINES	<i>Disclosure of information following commercial close</i>	
	Project summary	Within 30 days of commercial close
	Financial structure of SPV	Within 30 days of financial close
	Contract documents	Within 30 days of commercial close
	Other project documents	Within 30 days of commercial close
	Renegotiations and renegotiated agreements and associated documents	Within 30 days of signature of renegotiated contract
	<i>Performance disclosure throughout contract period</i>	
	Performance information	Within one year of financial close, updated annually
TEMPLATE AND DATA STANDARDS	<p>A simple template with details of elements to be disclosed at various project phases</p> <p>Consistent, structured, machine readable, and exploitable information</p>	

*Note:* PPP = public-private partnership; RFP = request for proposal; RFQ = request for qualification; RTI = Right to Information; SPV = special purpose vehicle.

# 1. Introduction

Based on research and analysis over the past few years, the World Bank Group Public-Private Partnerships (PPP) Cross-Cutting Solution Area has worked on creating a [Framework for Disclosure in Public-Private Partnerships](#) (the “Framework”), which suggests a systematic structure for disclosing information proactively at different phases of the PPP process. Two documents, [Jurisdictional Studies](#) and [Good Practice Cases](#), have been developed to provide relevant background and resources complementing the goals of the Framework. The Framework has undergone a public consultation process and is now being piloted in four countries—Ghana, Honduras, Kenya, and Nigeria. The work in Nigeria involves two projects, with the Nigeria Sovereign Investment Agency and the Infrastructure Concession Regulatory Commission.

The Framework suggests the initiation of work with a PPP Disclosure Diagnostic (the “Diagnostic”) in countries. The objective of the Diagnostic is to help PPP policy makers and practitioners to assess the status of PPP disclosure in the jurisdiction and identify customized PPP disclosure solutions for all PPP types to enable better disclosure. The Diagnostic can also be used by World Bank teams.

The Diagnostic includes an examination of each of the following areas in a country:

- Preliminary overview of the general transparency environment
- History and outlook for PPP disclosure
- Political environment for disclosure
- Legal and policy framework
- Process and institutions
- Guidance on confidential information
- Information systems
- Technology and data standards

Under each of the areas identified, the Diagnostic provides the key questions policy makers and practitioners should ask, analysis and techniques for assessing gaps, resources for learning more, and tools for establishing a customized PPP disclosure framework for the jurisdiction. The relevance of each of the areas varies based on the unique circumstances within the country.

This Diagnostic Report is structured around the key themes that are relevant to Ghana’s disclosure environment, as summarized in table 1.

**TABLE 1: KEY THEMES FOR GHANA’S DISCLOSURE ENVIRONMENT**

THEME	KEY QUESTION	SECTION
TRANSPARENCY AND OPENNESS IN GOVERNANCE	Is there a transparent and open governance environment in Ghana?	2
PPP EXPERIENCE	Does the government have substantial experience in PPPs? Does the government have an ongoing PPP program?	3
INSTITUTIONAL FRAMEWORK FOR PPPs	What are the institutions supporting the preparation, procurement, and implementation of PPPs?	4
LEGAL AND INSTITUTIONAL FRAMEWORK FOR PPP DISCLOSURE	Is the legal and regulatory environment sufficiently conducive to PPP disclosure? Is there RTI legislation that supports proactive disclosure? Do PPP legislation/regulations provide clarity on the elements, timing, institutional structure, and processes for disclosure? Do other related legislation and regulations support disclosure? Are there guidelines and processes in place to guide disclosure? Are there standardized disclosure contract clauses and templates? Is there a web portal(s) available with a user-friendly back end and front end design in machine readable format?	5
DISCLOSURE IN PRACTICE AND KEY CHALLENGES	What information is disclosed in practice? What are the key challenges to disclosure?	6

*Note:* PPP = public-private partnership; RTI = Right to Information.

Based on the findings, an assessment of the specific gaps in the political, legislative, and institutional contexts is detailed in section 7. Section 8 provides specific recommendations. The key material reviewed in the preparation of this Diagnostic is listed in section 9. Annex A provides the text of the suggested Framework for Disclosure of Information in PPPs in Ghana. The Framework also contains standard contractual clauses and a template for disclosure in annexes A.1 and A.2, respectively. Annex B provides a comparison of the World Bank Group Framework and the agreed Framework with current disclosure in Ghana.

## 2. Transparency and Openness

### Government Commitment

Ghana is a stable democracy. The country has successfully gone through five free and fair elections since democracy was restored in 1993. Ghana has enjoyed the benefits of foreign direct investment and donor activity, due to its reputation in the quality of governance. According to the Transparency International Corruption Perceptions Index for 2015, Ghana ranks 56 of 168 countries globally, and is ranked the seventh least corrupt country in Africa. Ghana has also signed several key international treaties and laws related to transparency, good governance, and anti-corruption. These include the African Union Convention on Preventing and Combating Corruption, the Economic Community of West African States (ECOWAS) Protocol on the Fight Against Corruption, the ECOWAS Supplementary Protocol on Democracy and Good Governance, the United Nations Convention Against Corruption, and the Extractive Industries Transparency Initiative.

Ghana joined the Open Government Partnership (OGP) in 2011, committing to greater transparency and accountability in e-government, fiscal status, public participation, and public service delivery. In its OGP Action Plan for 2013–14, the government committed to strengthening the management of public expenditure by introducing appropriate legislation; disclosing budgetary information publicly to facilitate monitoring of government expenditures; maintaining and strengthening the independence of the Public Interest Accountability Committee, which enforces transparency in the management of oil revenues; and ensuring transparent tracking of government investments through legislative backing.

While continuing its efforts on the first OGP Action Plan, Ghana has developed a second OGP Action Plan for 2015–17, which commits to adopting open contracting and contract monitoring to ensure value for money, prosecuting officials indicted by the Public Accounts Committee, ensuring all government contracts would be subject to the Public Procurement Act, and putting in place open competitive bidding and the publication of petroleum contracts through the passage of the Petroleum Exploration and Production Act. The Action Plan had also committed to the enactment of a Right to Information (RTI) Act by December 2016. However, the RTI bill was not passed by the last Parliament (whose term has now lapsed), with the result that the entire legislative process to enact this law will need to be started by the new government.

National bills and laws are published on the website of the Parliament. Parliamentary proceedings, including debates, are recorded verbatim, published, and placed in the public domain in the Hansard of the Parliament. The website of the Parliament also includes the reports of various parliamentary committees. Citizens have the opportunity to provide feedback on bills placed before the Parliament. The law stipulates specific procedures pertaining to public disclosure during the legislative process. This includes the obligation



upon the government to make any proposed bill public at least two weeks prior to its introduction in the Parliament. These practices are not followed consistently, however, resulting at times in public intervention. A recent example of this was the Postal Packets and Telecommunication Messages bill (2015), which was kept open for public comment only for four days, and was not published on the website of the Parliament. Concerns about this were expressed in the media and other public platforms, and the Parliament added two weeks to the public consultation. Eventually, the bill was withdrawn from consideration in June 2016.

In terms of mechanisms to monitor government performance, a few civil society organizations (CSOs) and other entities are involved in such activities. These include public policy think tanks, online portals that monitor the functioning of the legislature, and organizations that conduct regular surveys assessing public attitudes on governance and democracy. The Committee on Government Assurances, a committee of 25 Members of Parliament, acts as a bipartisan monitoring mechanism within the Parliament. Ghana has a vibrant media (print and radio), which is a major source of information on government performance for citizens. However, there is a widespread perception that different media houses are aligned to the major political parties.

## Open Data and Open Government

Despite the setback to the freedom of information regime in the country, Ghana already has in place an ambitious plan for proactively placing government data in the public domain. The government's information portal contains 133 data sets from 25 agencies. The website is currently undergoing migration to a new platform, which envisages a more robust information management system that will iron out errors and technological glitches. In addition, the government has developed eServices and ePayment platforms to facilitate the provision of services such as birth certification, requests for a nominal police report, passport applications, and driver's license renewals. These platforms remain in an early stage of development, with a large majority of citizens continuing to seek such services from government offices in person.

Some ministries, departments, and agencies (MDAs) and metropolitan, municipal, and district assemblies (MMDAs) have set up their own websites with relevant information for the public. The information is not fully consistent and updated, in part due to capacity constraints of the government, especially at the subnational level.

In terms of proactive disclosure and public engagement on policy matters, the government has in the past organized policy fairs, "meet the press" events with MDAs, and public assembly events with the President. Occasionally, MDAs and MMDAs arrange ad hoc workshops with their constituents.

The Ghana Integrated Financial Management Information System was launched in September 2009, as part of larger public financial management (PFM) reforms that were rolled out through the Ministry of Finance and the Controller and Accountant General's

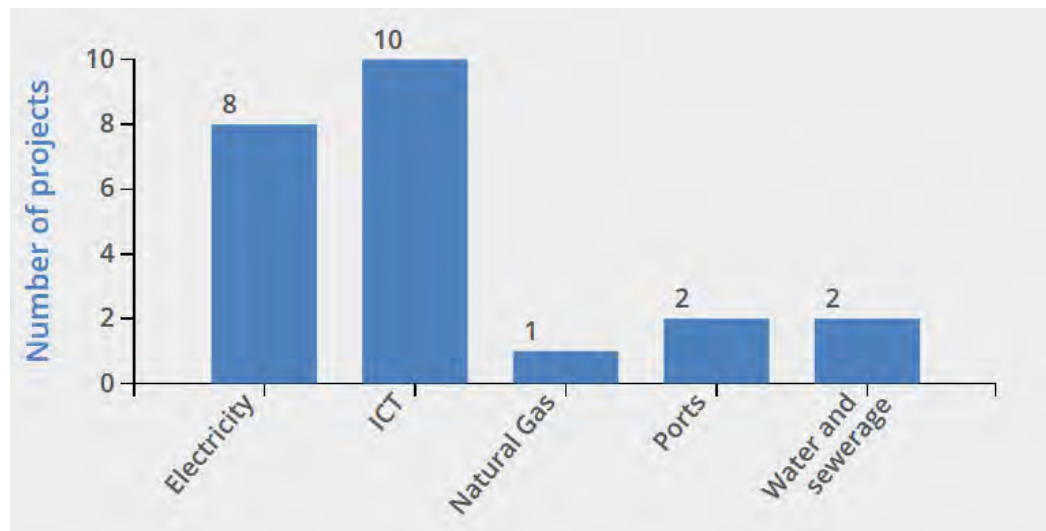
Department. The system is an ambitious initiative for improved recordkeeping, accounting, and transparency in financial management.

The government also oversees the Commonwealth Secretariat Debt Recording and Management System. The Debt Management Division within the Ministry of Finance uses this integrated tool for recording, analyzing, and reporting public sector debt, including all external debt as well as government on-lending and loan agreements, within a single comprehensive platform.

### 3. PPP Experience

The development and implementation of PPPs remains at a nascent stage in Ghana. The World Bank’s Private Participation in Infrastructure Database lists 23 projects that reached financial close over 1990–2014, of which eight are independent power producer (IPP) projects (figure 1).

FIGURE 1: NUMBER OF PPP PROJECTS, BY SECTOR



Source: <http://ppi.worldbank.org/snapshots/country/Ghana>.

Note: ICT = information and communications technology; PPP = public-private partnership.

The largest IPP in Ghana reached financial close on October 3, 2014, under which CenPower Generation Company Ltd was set up as a special purpose vehicle (SPV) to develop the Kpone Independent Power Plant (KIPP) project in the Tema Industrial Zone. The project is a 350 megawatt power station, which will account for approximately 10 percent of Ghana’s installed capacity and 20 percent of the available thermal generation capacity when it comes on stream in 2017. Other than IPPs, the country has successfully operationalized only one PPP project, the Teshie Nungua Water Desalination project. The project’s contract was signed in February 2011, financial close occurred in October 2012, and the project was inaugurated in April 2015. The project is a Water Purchase Agreement between the Ghana Water Company Limited (GWCL) and Befesa Desalination Development Ghana Ltd, under which GWCL buys potable water from Befesa and distributes it to the Teshie-Nungua area.

Although the number of projects on the ground remains small, the Government of Ghana has identified PPPs as an important mode for financing infrastructure, given that the country’s infrastructure and capital project needs are expected to reach US\$12 billion in new financing by 2025. The Ministry of Finance highlighted a series of PPP projects as top priorities in 2016, including the Accra-Tema, Accra-Kumasi, and Accra Takoradi

roads. Other priority projects include the Tema Port expansion project, and the Boankra Inland Port and Eastern Railway Line.

Although there is recognition that PPPs will play an important role in delivering infrastructure projects, the legal framework to develop and implement PPPs in Ghana remains limited. Currently, the main policy document that governs PPPs in the country is the PPP Policy 2011. A PPP bill was introduced in the Parliament and had made significant progress, the term of the Parliament lapsed and the legislative process will now have to begin afresh with the election of the new government in early 2017. Meanwhile, other supplementary legislation and policies, including the Public Investment Management (PIM) Policy 2015, the Public Procurement Act 2003, and the Public Financial Management Act 2016 will guide the PPP process.

## 4. Institutional Framework for PPPs

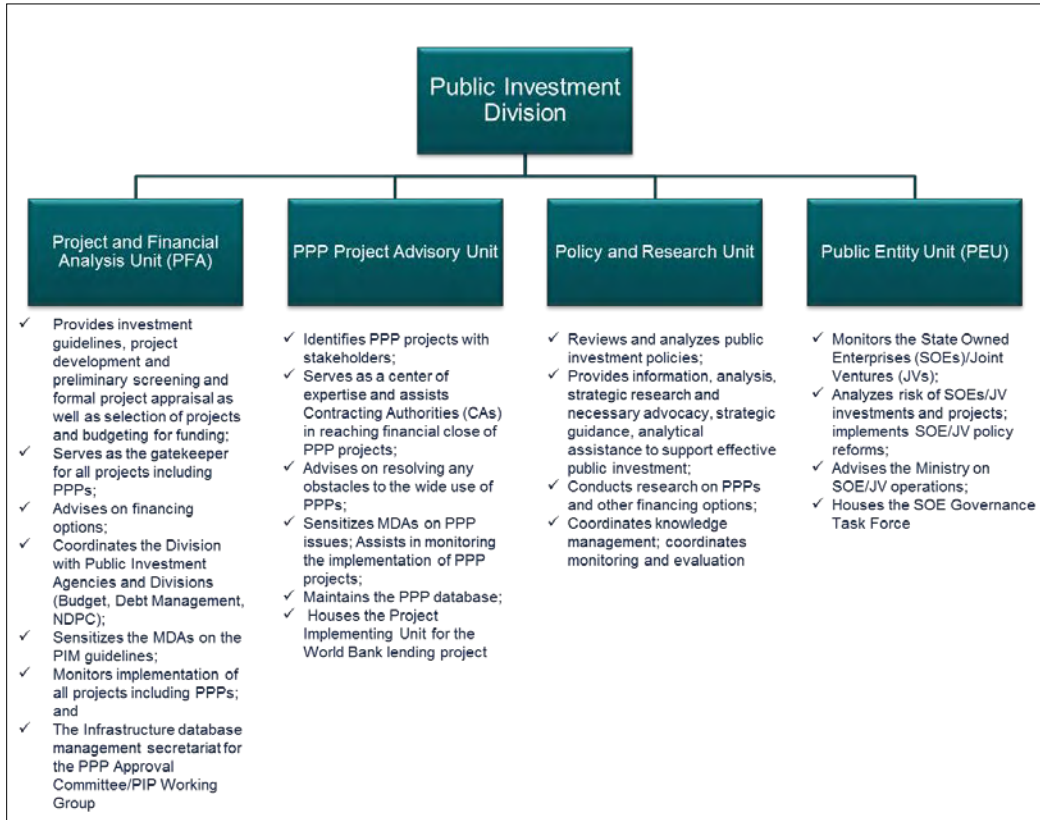
In the absence of a PPP Act, the institutional framework for PPP projects in Ghana is provided by the PPP Policy 2011. However, its implementation has been mixed, in part because IPP transactions, which form almost one-third of Ghana's PPP portfolio so far, have generally continued to operate outside the PPP policy.

The Ghana PPP program is currently housed within the Public Investment Division (PID) within the Ministry of Finance. PID is mandated to provide strategic direction and coordination in the management and delivery of public investments, including public entities in partnership with the public and private sectors. However, the influence and technical capacity of the PPP Unit remains quite limited for two main reasons. First, the location of the unit within the Ministry of Finance means that it faces several restrictions in procuring human resources quickly, hiring technical staff at market rates, and adequately training and retaining civil servants. Given the novelty of the concept of PPPs in Ghana, it has taken several years for MDAs, MMDAs and the political executive to appreciate and support a new way of procurement in the form of PPPs. Second, since the launch of the program, PID has had to contend with some contracting authorities acting independently of the PPP policy or opting out of the PPP process altogether. This has particularly been the case with highly profitable authorities and those with a history of successfully procuring large infrastructure projects (for example, the Ghana Ports and Harbours Authority, Ghana Airport Company Limited, and other state-owned enterprises).

Some of these challenges had been addressed in the PPP bill that lapsed with the end of the last session of the Parliament. Had it been passed, a semi-autonomous agency would have been set up to function outside the Ministry of Finance, with the liberty to procure relevant human and other resources at market rates, as well as build an appropriate level of capacity and influence. Critically, the law would also have obliged all contracting authorities to comply with the PPP process.

As things stand, the PPP Policy 2011 remains the main policy document that defines the PPP process in Ghana. It identifies PID within the Ministry of Finance as the main coordinating entity in the context of PPPs. PID is comprised of four units: Project and Financial Analysis Unit, PPP Project Advisory Unit, the Policy and Research Unit, and Public Entity Unit. Figure 2 provides details about these units and their roles and responsibilities in the PPP process.

FIGURE 2: ROLES AND RESPONSIBILITIES OF UNITS UNDER THE PID



Source: Public Investment Division, Ministry of Finance, Government of Ghana.

Note: JV = Joint Venture; MDAs = ministries, departments, and agencies; NDPC = National Development Planning Commission; PEU = Public Entity Unit; PFA = project and financial analysis; PID = Public Investment Division; PIM = Public Investment Management; PIP = Public Investment Program; PPP = public-private partnership; SOEs = state-owned enterprises.

In addition, there are several departments and institutions inside and outside the Ministry of Finance that play other critical roles in the PPP process. Details of these entities and their responsibilities are provided in table 2.

**TABLE 2: INSTITUTIONAL FRAMEWORK FOR PPPs**

INSTITUTION	NATURE OF INSTITUTION AND ROLE IN THE PPP PROCESS
CONTRACTING ENTITIES	Contracting entities represent MDAs, MMDAs, or other authorities under the government that participate in the PPP process. These entities are encouraged, where appropriate, to establish Project Management Units to assist in project identification, needs and options analysis, concept origination, and contract management, monitoring, reporting, and evaluation.
NATIONAL DEVELOPMENT PLANNING COMMISSION	With the assistance of contracting authorities, the Commission prepares the National Infrastructure Plan (NIP), which is the plan from which every PPP project must emanate. Where the project is not part of the NIP, the project must originate from the contracting authority's approved development plan or approval must be sought from NDPC.
MINISTRY OF TRADE AND INDUSTRY	The ministry ensures the participation of Ghanaian SMEs in the PPP process through capacity-building activities and the promotion of PPPs among SMEs.
DEBT MANAGEMENT DIVISION, MINISTRY OF FINANCE	This division ensures the fiscal sustainability of PPP projects for the government, considering the direct and contingent liabilities that arise from each PPP project.
BUDGET DIVISION, MINISTRY OF FINANCE	This division ensures that PPPs are duly represented in the annual budgeting exercise, specifically ensuring that payments to be incurred by MDAs under a PPP contract are consistent with the national budget <sup>a</sup>
GENERAL ASSEMBLY OF THE MMDAs	The General Assembly acts as the approving authority for MMDAs requesting to undertake a PPP project, where the total estimated cost does not exceed ₵0.5 million in the case of district assemblies, ₵1 million in the case of municipal assemblies, and ₵2 million in the case of metropolitan assemblies.
PPP APPROVAL COMMITTEE	This committee is the approval body for contracting authorities seeking to undertake PPPs whose estimated project costs do not exceed ₵50 million, and for PPPs undertaken by MMDAs with total estimated project costs exceeding ₵2 million. The committee is comprised of the following persons: the Minister of Finance (as Chair), the Chairperson of NDPC, the Minister of Justice and the Attorney General, the Minister of Trade and Industry, the Chief Executive of the Ghana Investment Promotion Centre, the Chief Executive of the Public Procurement Authority, and the Minister or Head of the contracting authority.
CABINET	The Cabinet is the approving authority for PPPs that require the government to comply with Article 174 or 181 of the Constitution. In addition, the Cabinet has to approve and recommend for parliamentary approval PPPs whose estimated project cost exceeds ₵50 million.
PARLIAMENT	The Parliament is the final approval authority for PPP projects that require the government to comply with Article 174 or 181 of the Constitution. It is also the final approving authority for PPPs whose estimated project cost exceeds ₵50 million.

INSTITUTION	NATURE OF INSTITUTION AND ROLE IN THE PPP PROCESS
ATTORNEY GENERAL'S DEPARTMENT AND THE LEGAL DIVISION IN THE MINISTRY OF FINANCE	These two legal bodies together ensure that all PPP agreements conform to Ghanaian law.

*Note:* MDA = ministries, departments, and agencies; MMDA = metropolitan, municipal, and district assemblies; NDPC = National Development Planning Commission; NIP = National Infrastructure Plan; PPP = public-private partnership; SMEs = small and medium enterprises.

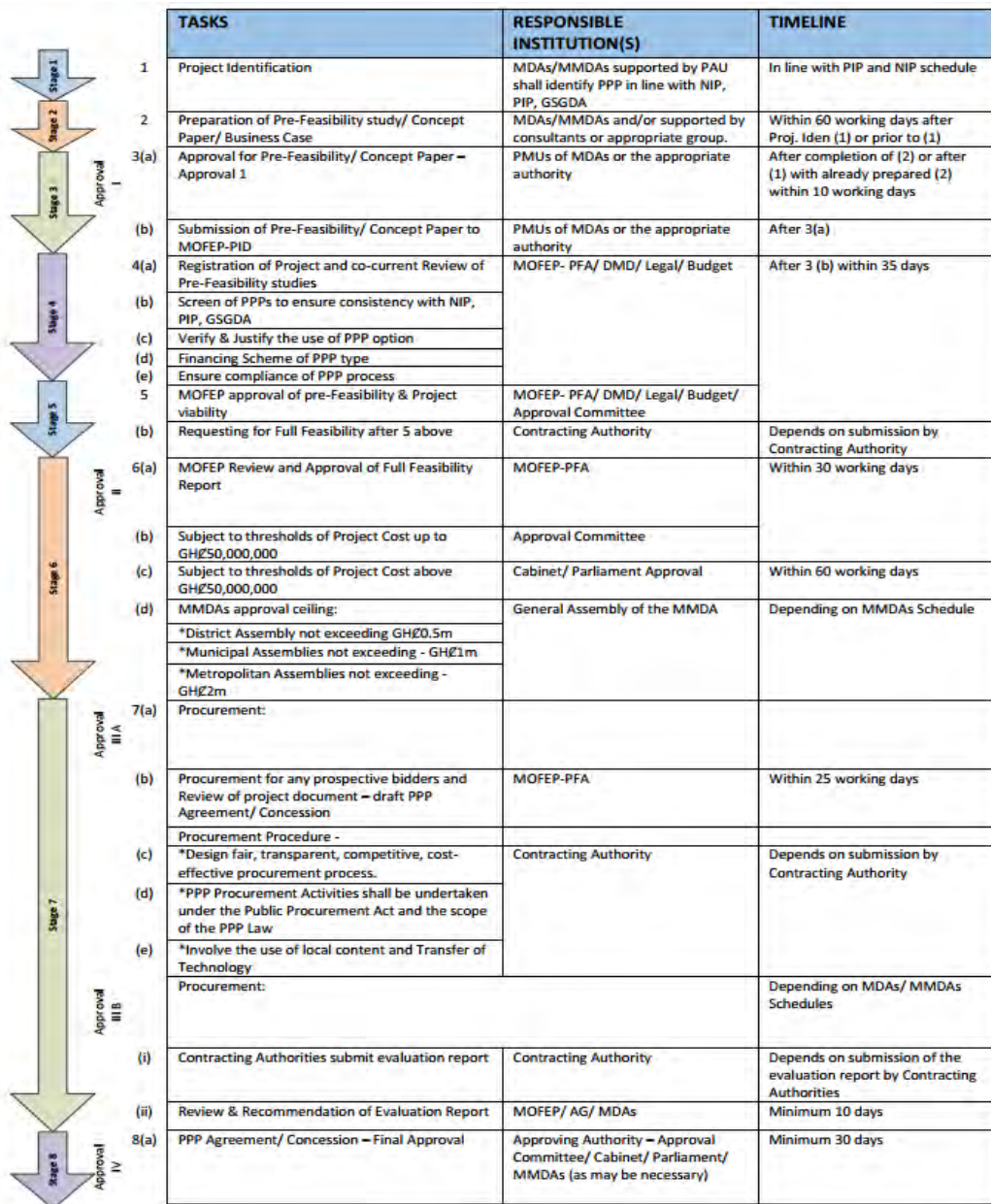
a. Currently the division does not report to the Cabinet on contingent liabilities arising from PPPs. However, as per Section 15 (2)(e) of the Public Financial Management Act, 2015, the fiscal strategy document shared with the Cabinet for approval must include contingent liabilities, and the annual budget must also include contingent liabilities related to PPPs (Section 21 (5)(v)).

In addition, the PPP Policy 2011 provides the process that each project must follow in the PPP life cycle. Figure 3 (overleaf) shows these details.

In general, the institutional framework and process are designed to be carried out sequentially, with gatekeeping roles embedded throughout the process to ensure that the design of the project improves at each step of the process. Although this may result in a slowing down of the process, it is envisaged that it will result in an improved success rate of projects in the longer term. However, the PPP Act, when it is passed by the Parliament, is likely to result in streamlining this process further.



FIGURE 3: PROCEDURES, TASKS, RESPONSIBILITIES, AND TIMELINES FOR PPP PROJECTS



Source: PPP Policy 2011, Government of Ghana.

Note: AG = Attorney General; DMD = Debt Management Division; GSGDA = Ghana Shared Growth and Development Agenda; MDA = ministries, departments, and agencies; MMDA = metropolitan, and municipal, and district assemblies; MOFEP = Ministry of Finance and Economic Planning (now Ministry of Finance); NIP = National Infrastructure Plan; PAU = Project Advisory Unit; PFA = project and financial analysis; PID = Public Investment Division; PIP = Public Investment Program; PMU = Project Management Unit; PPP = public-private partnership.

## 5. Legal and Institutional Framework for PPP Disclosure

### Disclosure

Under Ghana's 1992 Constitution, citizens are guaranteed the right to information. Article 21(1)(f) states: "Persons including the Applicants are entitled to access public information that is in the custody or possession of the Government upon a request, and where appropriate and lawful." However, the RTI bill, which would create the enabling legislative framework for this constitutional right, has yet to be passed into law. The bill was first presented to the Parliament on February 5, 2010, and although both major political parties have agreed to the bill in principle, neither party has been able to secure the bill's passage. The enactment of an RTI law remains a part of the government's commitments under the OGP Action Plans for 2013–14 and 2015–17.

The proposed PPP bill, which was introduced in the Parliament in March 2016, would also have had a direct impact on PPP disclosure, as it contained several transparency-related provisions. It is likely that key transparency provisions in the bill will continue to be retained when it is reintroduced in the Parliament. Until the PPP bill is enacted into law, the PPP Policy 2011 provides the framework that informs PPP disclosure. Although general guiding principles of transparency are embedded within the policy, explicit guidelines for disclosure were not included in it, as these aspects were to be regulated by future legislation and statutes.

Despite the setbacks to the enactment of the RTI and PPP bills, there are several other laws and policies that have a direct impact on PPP disclosure. The most important among these is the Public Procurement Act (PPA) 2003, which has several clauses that define the types of information that can be released, to whom, and at what point in the procurement process. Although these clauses generally apply to any government procurement process and do not take into account the specificity of PPPs, the PPA provides a justiciable framework, which, given the absence of a PPP law, could be extended to PPPs as well. Under the provisions of Section 28 of the Public Procurement Act, any procurement entity in Ghana must maintain a record of its procurement proceedings; and, under specific parameters, this information must be made available upon request to certain requesting parties. These provisions are outlined in table 3.

TABLE 3: DISCLOSURE-RELATED CLAUSES IN THE PUBLIC PROCUREMENT ACT, 2003

RECORDKEEPING MANDATED	DISCLOSURE AVAILABLE UPON REQUEST BY THE COURTS PRIOR TO THE COMPLETION OF PROCUREMENT PROCEDURES	DISCLOSURE AVAILABLE UPON REQUEST BY AN INDIVIDUAL AFTER PROCUREMENT PROCEDURES ARE COMPLETED
Description of the procurement need (goods, works, or services to be procured)		Upon request, be made available to <i>any person</i> after a tender, proposal, offer, or quotation has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract
Names and addresses of suppliers or contractors that submitted tenders and those with whom the procurement contract is entered		
Information relating to the qualifications, or lack of qualifications, of suppliers or contractors that submitted tenders, proposals, offers, or quotations	<p>May be ordered at an earlier stage by a competent court, except that when ordered to do so by a competent court and subject to the conditions of the court order, the procurement entity shall not disclose</p> <p>(a) information, if its disclosure would</p> <ul style="list-style-type: none"> <li>(i) be contrary to law,</li> <li>(ii) impede law enforcement,</li> <li>(iii) not be in the public interest,</li> <li>(iv) prejudice legitimate commercial interests of the parties, or</li> <li>(v) inhibit fair competition as provided under the Protection Against Unfair Competition Act, 2000 (Act 589); or</li> </ul> <p>(b) information relating to the examination, evaluation, and comparison of tenders, proposals, offers or quotations and tenders, proposal, offer or quotation prices, other than the summary referred to in subsection (1) (e) of this section.</p>	Upon request, be made available to suppliers, contractors, or consultants that submitted tenders, proposals, offers, or quotations, or applied for prequalification after a tender, proposal, offer, or quotation has been accepted or procurement proceedings have been terminated without resulting in a procurement contract
Price, or the basis for determining the price, and a summary of the other principal terms and conditions of each submitted tender and the finalized procurement contract <sup>a</sup>		
Summary of the evaluation and comparison of tenders, proposals under Section 69, offers, or quotations		

RECORDKEEPING MANDATED	DISCLOSURE AVAILABLE UPON REQUEST BY THE COURTS PRIOR TO THE COMPLETION OF PROCUREMENT PROCEDURES	DISCLOSURE AVAILABLE UPON REQUEST BY AN INDIVIDUAL AFTER PROCUREMENT PROCEDURES ARE COMPLETED
If the submitted tenders, proposals, offers, or quotations were rejected, a statement to that effect and the grounds for the rejection		
If, in procurement proceedings involving methods of procurement other than tendering, those proceedings did not result in a procurement contract, a statement to that effect and the reasons		
A summary of any requests for clarification of the requalification or invitation documents, the responses received, as well as a summary of any modification of the documents	<p>May be ordered at an earlier stage by a competent court, except that when ordered to do so by a competent court and subject to the conditions of the court order, the procurement entity shall not disclose</p> <p>(a) information, if its disclosure would</p> <p>(i) be contrary to law,</p> <p>(ii) impede law enforcement,</p> <p>(iii) not be in the public interest,</p> <p>(iv) prejudice legitimate commercial interests of the parties, or</p> <p>(v) inhibit fair competition as provided under the Protection Against Unfair Competition Act, 2000 (Act 589); or</p> <p>(b) information relating to the examination, evaluation, and comparison of tenders, proposals, offers, or quotations and tenders, proposals, offers, or quotation prices, other than the summary referred to in Subsection (1) (e) of this section</p>	<p>Upon request, be made available to suppliers, contractors, or consultants that submitted tenders, proposals, offers, or quotations, or applied for prequalification after a tender, proposal, offer, or quotation that has been accepted, or procurement proceedings have been terminated without resulting in a procurement contract</p>

a. If these are known to the procurement entity.

Apart from the Constitution, the PPP Policy 2011 and the PPA, other laws and policies that have an impact on PPP disclosure include the Public Investment Management Policy 2015, the Public Financial Management Act 2016, the Petroleum Revenue Management Act 2011, the Petroleum (Exploration and Production) Act 2016, the Environmental Protection Agency Act 1994, and the Public Utilities Regulatory Commission Act 1997. Details of relevant clauses from all these, as well their implications for PPP disclosure, are provided in table 4.

**TABLE 4: LEGAL FRAMEWORK FOR DISCLOSURE AND IMPLICATIONS FOR PPP DISCLOSURE**

CLAUSE	TEXT/DESCRIPTION	IMPLICATIONS FOR PPP DISCLOSURE
<i>CONSTITUTION OF GHANA 1992</i>		
ARTICLE 21(1)(F)	Persons are entitled to access public information that is in the custody or possession of the government upon a request, and where appropriate and lawful.	As the government possesses information related to PPPs, this general guideline would be applicable to PPPs as well.
ARTICLE 25(8)	The state must take steps to eradicate corrupt practices and the abuse of power.	The increase in transparency through the disclosure of PPP contracts and the PPP process, helps the state to eradicate corrupt practices and abuse of power.
ARTICLE 179(1)	Every year, the President must present estimates of the revenues and expenditure of the government to the Parliament.	Financial obligations and revenues arising from PPPs are a part of the government's annual budget, and must be made public through the Parliament
<i>PPP BILL, 2016<sup>a</sup></i>		
SECTION 6(1)	The procurement process relating to a partnership project shall be fair, transparent, and competitive.	Establishes transparency as a key principle in the PPP procurement process.
SECTION 6(4)	Each qualified and short-listed bidder who complies with the bidding process provided under this act has a right to equal opportunity and access to information.	Provides all bidders the right to access information related to the project.
SECTION 6(5)	Subject to this act and any other applicable enactment, each aspect of the partnership process shall be accessible to the public.	Provides a general public transparency framework for the PPP procurement process.
SECTION 7	This section mandates that adequate stakeholder consultations be conducted by the public authority engaging in a PPP arrangement.	Obliges the contracting authority to conduct stakeholder consultations.
SECTION 65	Public authorities are required to keep a record of all matters relating to the selection and	Obliges the contracting authority to maintain records related to the project.

CLAUSE	TEXT/DESCRIPTION	IMPLICATIONS FOR PPP DISCLOSURE
SECTION 67	<p>award proceedings for a project.</p> <p>The Partnerships Agency is required to make available relevant information on projects to any individual requesting the information, subject to the individual covering the cost of the medium of information. In addition, the agency must provide the following information on a designated website:</p> <ul style="list-style-type: none"> <li>(a) Public-private partnership projects registered with the agency</li> <li>(b) Project concept notes or prefeasibility studies</li> <li>(c) Requests for qualification</li> <li>(d) Names of prequalified and short-listed private entities</li> <li>(e) Requests for proposals</li> <li>(f) Notices of contract awards</li> <li>(g) Decisions of the Appellate Panel</li> <li>(h) Reports submitted on the performance of private entities</li> <li>(i) Any other reports prepared by public authorities or the agency on partnership projects.</li> </ul>	<p>Obliges the Partnerships Agency to disclose proactively as well as on request specific information related to the project.</p>
SECTION 68	<p>This section provides stringent consequences for noncompliance of a request for information by a minister or public authority through the Partnerships Agency. Failure to comply with the request or knowingly providing misleading or false information constitutes an offense with a penalty fine and/or imprisonment.</p>	<p>Defines the sanctions regime in case of noncompliance related to disclosure, although limited to oversight bodies and not the public.</p>
<i>PPP POLICY 2011</i>		
SECTION B(13)	<p>There must be a well-defined procurement process for PPPs; instructions to bidders must be clear and unambiguous to prevent manipulation or abuse of the process; the bid conditions and evaluation criteria must lead to the attainment of value for money, economy, and efficiency, and must be made available to all interested private sector parties; the process shall be accessible to the public to the extent allowed by law, except where national security would be</p>	<p>Provides the general disclosure framework for PPP projects.</p>

CLAUSE	TEXT/DESCRIPTION	IMPLICATIONS FOR PPP DISCLOSURE
SECTION B(13)	prejudiced; and equal opportunity and access to information must be given to all interested bidders. Contracting authorities must undertake adequate stakeholder consultations to ensure a meaningful understanding and support for a PPP arrangement.	Obliges contracting authorities to hold stakeholder consultations in the pre-contract phase.
SECTION E(66)	Following the signing of a contract, the contracting authority bears the responsibility of implementing, managing, enforcing, monitoring, and reporting on the PPP agreement or concession.	Provides the framework through which recordkeeping related to the project must be maintained throughout the project life cycle.
SECTION E(73)	A comprehensive and regular review of the overall process shall be a core responsibility of the Ministry of Finance. Reviews shall be prepared openly and transparently within an appropriate timeframe. The review shall specify implications for the procurement of infrastructure and the delivery of quality.	Ensures that reviews conducted on the PPP policy shall be conducted openly and transparently.

*PUBLIC INVESTMENT MANAGEMENT POLICY, 2015*

SECTIONS 2(3)(2), 5(2) AND 9(3)	These sections contain clauses on transparency and accountability, whereby all relevant stakeholders and the public must have the ability to access information related to public investment. This is to be realized through the public view window of PIMS. <sup>b</sup> PIMS will have a dedicated module for PPPs where details of PPP projects will be retained and monitored by PID.	Provides the general framework through which public investment-related information must be made public. This would include PPPs as well, due to the public investment component in a PPP project.
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*PUBLIC FINANCIAL MANAGEMENT ACT, 2016*

SECTION 4(2)(A)(B)	The government must prepare and submit annual and supplementary budget estimates and reports to the Parliament for approval.	Any financial obligations to the state from PPP arrangements would be incorporated into the annual budget, and would therefore become public information once submitted to the Parliament.
SECTION 8(4)(C)	The Controller and Accountant-General must keep, render, and publish statements on public accounts.	PPPs will be a part of these statements, due to investment of public resources.
SECTION 13(3)	Fiscal management must be carried out in a professional and transparent manner, aligned with the best global practices and standards	Provides the rationale for disclosing information related to public finances, which would extend to PPPs as well.
SECTION 13(4)(C)	Timely information related to the management of the fiscal policy shall be made publicly available, and any person responsible for publicizing the information shall not withhold it except for reasons	As PPPs have a direct implication on the government's fiscal responsibilities, this clause would extend to PPPs as well.

CLAUSE	TEXT/DESCRIPTION	IMPLICATIONS FOR PPP DISCLOSURE
	of national security, defense, or international obligations.	
SECTION 15(1)(2)(E)	The Minister of Finance must prepare and submit a Fiscal Strategy Document to the Cabinet for approval that includes a risk statement for the public sector showing quantified risks of guarantees, contingent liabilities, and PPPs.	As PPPs are important elements of the government's fiscal strategy, this information must be made available to the Cabinet, and could be made public through the Parliament.
SECTION 21(5)(E)(V)	The Minister of Finance must include detailed information on recent fiscal developments on contingent liabilities, including those related to PPPs, in the prepared annual budget.	Annual budgets are public documents; hence, this will have an indirect impact on PPP disclosure.
SECTION 25(6)	Entities <sup>c</sup> entering into a contract or arrangement that commits or purports to commit the government to make a payment must place the contract and related documents into GIFMIS.	As contracting authorities fall under this category of entities, they are obliged to place such information in GIFMIS.
SECTION 66(4)	Any government guarantee is subject to prior approval by the Parliament.	Any PPP arrangement requiring a government guarantee will become a matter of public record, given that the approval of the Parliament is needed.
SECTION E(66)	Following the signing of a contract, the contracting authority bears the responsibility of implementing, managing, enforcing, monitoring, and reporting on the PPP agreement or concession.	Provides the framework through which recordkeeping related to the project must be maintained throughout the project life cycle.
SECTIONS 71(1)(C) AND (2)(A)(B)(C)	Every six months, the Public Debt Management Office must prepare statistical bulletins that provide accurate and timely information on guarantees issued by the government and the purposes and beneficiaries of these guarantees. These bulletins must be published on the government's official website, the official website of the Ministry, and any other medium as determined by the Minister.	Any PPP arrangement that requires a guarantee will be included as a part of the statistical bulletin and will be disclosed.
SECTIONS 72(1)(B), (2)(D)(I)(II) AND (3)(B)	Every year, the Public Debt Management Office must prepare an annual report, which must include a list of outstanding government guarantees (including the amount and beneficiaries of the guarantees) and an assessment of the fiscal risk embedded in the guarantees. This report must be submitted to the Parliament.	Any PPP arrangement requiring a government guarantee will have information included in the annual report, which becomes a matter of public record following submission to the Parliament.

*PUBLIC PROCUREMENT ACT, 2003*

SECTION 24(2)(4)	This section obliges procurement entities to make public, upon request, the names of the	Contracting authorities must be willing to provide the general public (as well as participating tenderers) information on the
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CLAUSE	TEXT/DESCRIPTION	IMPLICATIONS FOR PPP DISCLOSURE
	suppliers or contractors who have been prequalified.	prequalification process. This would be applicable to PPP procurement.
SECTION 28	This section obliges procurement entities to maintain a record of their procurement proceedings; under specific parameters, this information must be made available upon request to certain requesting parties. <sup>d</sup>	As contracting authorities are procurement entities in this context, they may be liable to disclose PPP-related information.
SECTION 31(1)(2)	This section obliges procurement entities to publish notice of procurement contract awards.	Contracting authorities are mandated to publish details related the award of PPP contracts.
SECTION 39(2)	The procurement entity must publish details related to any selective-tendering award in the Public Procurement Bulletin.	When contracting authorities use selective tendering during PPP procurements, notice of the award must be published.
SECTION 40(2)	Procurement entities can engage in single-source procurement only after giving public notice and time for comments.	When contracting authorities engage in single-source procurement for PPPs, public notice and sufficient time for feedback must be given.
SECTION 47(1)(2)(3)	Procurement entities must publish invitations to tender or prequalify widely, including in the Procurement Bulletin and newspapers or trade journals with wide national or international circulation.	Contracting authorities must provide a fair and transparent prequalification bidding process for PPP tenderers.
SECTION 63	This section explicitly outlines that information relating to the evaluation of tenders, including the examination, any clarification, evaluation, or comparison, shall not be disclosed to any persons not involved officially in the evaluation process.	Provides restrictions on information disclosure in the procurement process, which, in the absence of a PPP Act, could be extended to PPPs as well.
SECTION 65(9)(C)	This section obliges procurement entities to publish in the Procurement Bulletin the names of firms or individuals awarded contracts, the start and completion dates, as well as the value of the contracts.	This procurement process is applicable to PPPs as well.

*PETROLEUM REVENUE MANAGEMENT ACT, 2011*

SECTION 8(1)(2)	This section obliges the relevant ministry to publish all records of petroleum receipts each quarter in several public media.	Would be applicable to PPPs in the petroleum sector.
SECTION 49	Management of petroleum revenue must be carried out with the highest internationally accepted standards of transparency and good governance.	Provides the general framework for transparency in the petroleum sector, in which there could be PPPs.
SECTION 49(3)	Disclosure of information or data that could significantly prejudice the performance of the Ghana Petroleum Fund may be declared as confidential by the Minister, and subject to parliamentary approval.	This would have a bearing on PPP projects in the petroleum sector, and defines the conditions under which information can be deemed confidential.

CLAUSE	TEXT/DESCRIPTION	IMPLICATIONS FOR PPP DISCLOSURE
	<p>However, anything declared as confidential information must have a clear explanation of the reasoning, and does not limit the access of the Parliament or the Public Interest Accountability Committee<sup>e</sup> to such information. Classified information along with the reasoning for its confidentiality is to be made available to the public upon request three years after the date it should have been disclosed, unless the reason for being classified is still valid.</p>	
<i>PETROLEUM (EXPLORATION AND PRODUCTION) ACT, 2016</i>		
SECTION 4	<p>The management of petroleum resources by the Republic of Ghana shall be conducted in accordance with the principles of good governance, including transparency and accountability.</p>	<p>Provides the general framework for transparency in this sector.</p>
SECTION 7(3)(4)(5)(8)	<p>Opening of an area: (3) The Minister shall prepare a report on the evaluation, which shall include a strategic assessment of (a) the impact of the petroleum activities on local communities; (b) the impact of petroleum activities on the environment, trade, agriculture, fisheries, shipping, maritime, and other industries and risk of pollution; and (c) the potential economic and social impact of the petroleum activities. (4) The Minister shall publish the evaluation report in the Gazette and in at least two state-owned daily newspapers, and may publish the report in any other medium of public communication. (5) The report shall specify the area proposed to be opened for petroleum activities, and the nature and extent of the petroleum activities. (8) The Minister shall publish the decision in the Gazette and in at least two state-owned daily newspapers, and may publish the report in any other medium of public communication.<sup>f</sup></p>	<p>Should PPPs be involved in carrying out these activities, this section defines specific obligations related to disclosure.</p>
SECTION 8(2)(5)	<p>Closure and redefinition of area: (2) The Minister shall, before closing an area or redefining the boundary of an area, publish a notice of the decision to close the area or redefine the boundary of the area in the Gazette and in at least two state-owned daily</p>	<p>Should PPPs be involved in carrying out these activities, this section defines specific obligations related to disclosure.</p>

CLAUSE	TEXT/DESCRIPTION	IMPLICATIONS FOR PPP DISCLOSURE
	newspapers, and may publish the report in any other medium of public communication. (5) The Minister shall, after the expiration of the 60-day period, publish the closure or redefinition of the boundaries of the area in the Gazette and in at least two state-owned daily newspapers, and may publish the closure or redefinition of the boundaries in any other medium of public communication. <sup>9</sup>	
SECTION 10(3)(6)	Petroleum agreement: (3) A petroleum agreement shall only be entered into after an open, transparent, and competitive public tender process. (6) The Minister shall publish an invitation to tender or an invitation for direct negotiations in the Gazette and in at least two state-owned daily newspapers, and may publish the invitation in any other medium of public communication.	Places transparency obligations on the procurement process.
SECTION 53	This section presents a strong stance on the confidential nature of data acquired through petroleum exploration, and emphasizes the nondisclosure of information without approval of the Petroleum Commission.	Provides the rationale for confidentiality of information in specific contexts.
SECTION 56(1)(2)	Petroleum register: (1) The Commission shall establish and maintain a register of petroleum agreements, licenses, permits, and authorizations as prescribed. (2) The register shall be open to the public.	Provides proactive disclosure obligations on the Commission, which would include information related to any PPPs involved.

*ENVIRONMENTAL PROTECTION AGENCY ACT, 1994<sup>h</sup>*

SECTION 2(O)(P)	The agency must develop a comprehensive database on the environment and its protection to inform the public, conduct seminars and training programs, gather information, and publish reports related to the environment.	May have implications where the activities of a PPP have an environmental impact.
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*PUBLIC UTILITIES REGULATORY COMMISSION ACT, 1997<sup>i</sup>*

SECTION 3(l)	The Commission has the responsibility to collect and compile data on public utilities, as it considers necessary for the performance of its functions, and maintain a register of public utilities.	Should a PPP be involved in public utilities, this clause has implications for recordkeeping and information management.
SECTION 19	The rates approved by the Commission shall be published by the Commission in the Gazette and the mass media.	Disclosure of information for the general public on potential PPP projects in the utilities sector.

CLAUSE	TEXT/DESCRIPTION	IMPLICATIONS FOR PPP DISCLOSURE
SECTION 46	The Commission must keep a register of recorded particulars about public utilities. This register shall be available to the public on such terms and conditions as the Commission shall determine.	Should a PPP be involved in public utilities, this clause has implications for proactive disclosure.

*Note:* GIFMIS = Ghana Integrated Financial Management Information System; PID = Public Investment Division; PIMS = Public Investment Management System; PPP = Public-Private Partnership.

a. <http://www.parliament.gh/assets/file/BILLS%20FOR%202016/PUBLIC%20PRIVATE%20PARTNERSHIP%20BILL,%202016.pdf>.

b. PIMS is a customized web-based database system that will be designed to facilitate effective and efficient delivery and management of public investment/projects.

c. As per the Public Financial Management Act, 2016, these entities refer to: “(a) the Executive, Legislature and Judiciary; (b) constitutional bodies; (c) ministries, departments, agencies, and local government authorities; (d) the public service; (e) autonomous agencies; and (f) statutory bodies.”

d. See table 3 for details on information that can be disclosed, to whom, and under which circumstances.

e. The Public Interest Accountability Committee was legally established to monitor compliance with the Act, provide a platform for public debate on the use of petroleum revenue, and provide independent assessments of the management of the use of petroleum revenues.

f. Section 7(6) says: “A person who has an interest in an area which is the subject of an evaluation report shall, within sixty days after the publication of the report, present the view of that person to the Minister.”

g. Section (8)(3) says: “A person who has an interest in the affected area may make a representation to the Minister on the closure or redefinition of the boundary within sixty days after the publication.”

h. <http://www.epa.gov.gh/ghanalex/acts/Acts/ENVIRONMENTAL%20PROTECTION%20AGENCY%20ACT%201994.pdf>

i. <http://www.purc.com.gh/purc/sites/default/files/act538.pdf>.

Further, the Office of the Auditor General has the mandate to play a key institutional role in promoting PPP disclosure by promoting transparency, accountability, and probity in the public financial management system of Ghana. Article 187 (2) of the Constitution says: “The public accounts of Ghana and of all public offices, including the courts, the central and local administrations, of the universities and public institutions of like nature, of any public corporation or other body or organization established by an Act of Parliament shall be audited and reported on by the Auditor-General.” As such, each year an audit of all public entities and accounts in Ghana is completed or facilitated by the Auditor General’s office.<sup>3</sup> Following the finalization of the auditing process, the completed report is presented to the Parliament, after which the report becomes public. Once the report is forwarded to the Parliament’s Public Accounts Committee (PAC), a public hearing occurs where the auditee is given the opportunity to explain their views on the Auditor-General’s report. The PAC then compiles its own report and requests the implementation of its recommendations. The PAC also liaises with the Attorney General’s Department to prosecute any offenders.<sup>4</sup> Although all public accounts are supposed to be audited by the Auditor General or have

<sup>3</sup> When the Auditor General’s Office is not able to conduct the audit, it participates in the procurement of a consulting firm to audit the respective government entity or account and have a representative present on the review committee.

<sup>4</sup> [http://www.parlcent.org/en/wp-content/uploads/2011/04/handbooks\\_and\\_guides/Public\\_Accounts\\_Committee\\_Ghana\\_Book\\_EN.pdf](http://www.parlcent.org/en/wp-content/uploads/2011/04/handbooks_and_guides/Public_Accounts_Committee_Ghana_Book_EN.pdf).

their audits facilitated by the Auditor General, some MDAs do not do so, particularly those with projects supported by donor assistance.

## Emerging Jurisprudence

Apart from the Constitution, there is limited legislation on disclosure of information in Ghana. Given that the right to information is not operationalized through legislation, citizens must resort to the courts when they are not able to receive information through formal request channels. For instance, in April 2016, a High Court of Justice court ordered the disclosure of copies of all documents related to the contract between the Ministry of Transport and Smarttys Productions for the branding of 116 rapid transit buses,<sup>5</sup> as the government was unable to demonstrate that the release of information would be offensive to national interest, public order, national security, or public morality.<sup>6</sup> In its judgment, the court acknowledged that the right to information was a human and constitutional right, and noted that an individual can enjoy the right to access information despite the absence of an RTI law in Ghana: “The State ought not to be allowed to benefit from the failure to pass a Freedom of Information Act by using the non-existence of such Act as a ground for refusing to disclose the requested information. Systemic failures or difficulties cannot justify breaches of fundamental human rights or dereliction of human rights obligations.”<sup>7</sup>

This case is a significant milestone toward the enactment of an RTI law, and indirectly points to the importance of putting in place such an enabling legislation so that citizens do not have to approach the courts to access their constitutional right to access information. At the same time, the court clarified that such a right was not absolute and was subject to concerns related to national defense and foreign relations, information that is prohibited from disclosure by another law, trade secrets and other confidential business information, inter-agency and intra-agency communications protected by legal privileges, information involving matters of personal privacy, and certain types of information compiled for law enforcement purposes.

In another case, recent jurisprudence (July 2016) indirectly supported the principle of information disclosure. The Supreme Court ordered the government to provide its agreement with the United States regarding the transfer of two Guantanamo Bay detainees into the country.<sup>8</sup> As a result, the Attorney General had to release these documents as evidence in a suit brought forward by two citizens against the Attorney General and

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<sup>5</sup> The ruling was given based on the 1992 Constitution under Article 21(1)(f): “Persons including the Applicants are entitled to access public information that is in the custody or possession of the Government upon a request, and where appropriate and lawful.”

<sup>6</sup> See <http://www.freedominfo.org/2016/04/judge-orders-disclosures-based-on-ghana-constitution>.

<sup>7</sup> Bus Branding Judgment, April 13, 2016, Suit No. HR/0027/2015, page 7.

<sup>8</sup> The court ordered that an in-camera presentation of the document would be conducted for the court, and then subsequently the court allowed the “notes verbale,” or the diplomatic communication between the United States and Ghana to be released as evidence for the trial.

Minister of Justice as well as the Minister of the Interior.<sup>9</sup> The court observed that the release of the documents would not result in any security threats, as the production of the documents was for the sole purpose of the suit and not for public scrutiny.

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<sup>9</sup> See <http://www.graphic.com.gh/news/general-news/bring-papers-on-gitmo-2-supreme-court-orders-govt.html>.

## 6. Disclosure in Practice and Key Challenges

### Current Practice

For disclosure, PID currently maintains a website, which includes general information about the division and its functions. The site also includes a copy of the PPP Policy 2011, a copy of the PIM Policy 2015, a draft copy of the PPP bill (2013), a projects pipeline list, and copies of the division's newsletters. Although basic information on pipeline projects is available on the website, the site does not include detailed information on the status of various projects, information on pre- and post-procurement stages, or media reports or feedback from the public.

Currently, 22 projects are listed on PID's pipeline list. These projects are in the roads and highways, transport, health, youth and sports, water, community development, and agriculture sectors. There are currently no PPP projects under litigation; however, the Teshie Nungua Desalination water project is under renegotiation with its private partner.

For public scrutiny of public procurement in general, media and CSOs typically play a significant role in demanding and ensuring transparency and accountability in the process. However, their knowledge and dissemination of PPP-specific information is far from comprehensive, as a result of a lack of understanding of PPPs as a very specific form of public procurement, as well as due to a lack of regular, structured, and detailed outreach about PPPs from the government. PID, under a World Bank-supported PPP project, has undertaken a series of workshops and seminars to educate the media on the specificity of PPPs and provide information on current projects in the PPP pipeline. However, with the slow pace of activity on PPPs, the media and CSOs tend to focus more on issues related to traditionally procured goods and services, to the detriment of improving public knowledge and scrutiny of PPPs.

### Key Challenges to PPP Disclosure

#### Capacity

Given that the PPP Unit, as well as the MDAs and MMDAs, are still learning how to carry out PPP transactions, and given that many of the project management units are understaffed and do not have dedicated information technology personnel at their disposal, there is a capacity deficiency in efficiently disclosing information about PPPs. That most of the MDAs lack well-organized and functional websites highlights the challenges that public authorities are facing in consistently and coherently updating information. Even the

government's information portal, which was originally set up with donor assistance and created for the sole purpose of proactive disclosure, faces similar capacity challenges.

### Cultural Attitudes and Administrative Processes

It is important to consider Ghana's cultural context. Given the hierarchical structure of the country's civil service, many public sector workers do not feel empowered to make decisions on disclosure of information. Due to a fear of potential negative repercussions from disclosing information without seeking approval from their superiors, the default practice has become a culture of secrecy and withholding information. In addition, the manner in which the majority of records are kept creates a barrier to timely disclosure.

For PPPs, given that MDAs and MMDAs are the contracting authorities and will be primarily responsible for providing information, a conscious effort will need to be made with the staff working on PPPs, to educate them on the benefits and requirements of disclosure, as per the PPP bill. It will be imperative to get buy-in from the contracting authorities, especially to have robust performance tracking after contracts are signed, which has posed a challenge in the past.

### Right to Information Legislation

Most provisions and clauses embedded in the PPP bill and in other sector-specific legislation pale in comparison to the passage of the RTI bill. Although the Constitution guarantees citizens the right to information, anecdotal evidence suggests that this is not practiced on the ground in a structured way. Without legislation on the public's right to information, different sections of the government may continue to operate in silos.

### Passage of the PPP Law

The PPP bill 2016 was not passed by the time the Parliament lapsed in January 2017. The legislative process to pass the bill will now have to recommence. Consequently, PID will continue to function with the current institutional constraints, which will in turn have an impact on information disclosure related to PPP projects.



# 7. Gap Assessment

TABLE 5: RAPID REVIEW AND GAP ASSESSMENT, BY COMPONENT

COMPONENT	RAPID REVIEW	Y/N	GAP ASSESSMENT
POLITICAL ECONOMY	Clear support from the highest levels of government (national and subnational) to disclosure in general	Y	<p>There is internal support. There is agreement among external stakeholders as well on the need to disclose, but the pressure on government to disclose by external stakeholders is still developing. Private sector support is substantial.</p> <p>However, there is no approved legislation or plan within the government for implementing disclosure systematically.</p> <p>Therefore, the political economy gap is assessed to be moderate.</p>
	Agreement on PPP disclosure among internal stakeholders (ministries, agencies, and subnational governments)	Y	
	Sufficient agreement on the need to disclose and pressure to disclose among important external stakeholders (political parties, unions, private sector, users, media, political commentators, think tanks, civil society organizations, and any others)	Y	
LAW	Are there laws, policies, and procedures in place that include the following?		<p>There is coverage of proactive disclosure and specific pieces of information to be disclosed in the draft PPP bill, which was introduced in the last Parliament. However, since the bill did not pass, currently only the constitutional mandate for disclosure exists.</p> <p>Therefore, the legislative gap is assessed to be wide.</p>
	• Proactive disclosure by governments or agencies	N	
	• Coverage of proactive disclosure relating to contracts or PPP	N	
	• High-level definition of confidential information, and protection of sensitive contract information	N	
• Timelines for disclosure	N		
• Any significant legislative or policy impediments or constraints to PPP disclosure	Y/N		

COMPONENT	RAPID REVIEW	Y/N	GAP ASSESSMENT
GUIDANCE	Clearly established roles and responsibilities on PPP disclosure	N	This gap is assessed to be wide, given the absence of guidance for all these features.
	Processes and actions clearly established in guidance or internal orders	N	
	Timelines for disclosure clearly established	N	
	Clear guidance available for officials on the identification and treatment of confidential information, including the timeframe associated with confidentiality, and factors to be considered as a test of commercial sensitivity or public interest	N	
	Penalties associated with failure to disclose	N	
	Mechanisms that monitor implementation of disclosure policies, internal and external	N	
	Processes for checking the accuracy of information and validation, internal and external	N	
DATA, TEMPLATE, AND STANDARD CONTRACT PROVISIONS	Degree of consistent, structured, and exploitable information disclosed across projects	N	There are no templates, standard contract provisions, or data standards.  The gap is assessed to be wide in this area.
	Defined common open data model or pattern	N	
	Guidance on improving data collection and data quality	N	
	Simple and extensible structure	N	
	Summary records for all available data at various stages and processes	N	
	Information on unit and staff managing data standards	N	
	Comprehensive and clear template for disclosure that covers key pieces of pre- and post-procurement information, including financial and performance information	N	
	<ul style="list-style-type: none"> <li>The template is flexible enough to cater to different kinds of PPPs and to PPPs in different sectors</li> </ul>		
	<ul style="list-style-type: none"> <li>The template is dynamic, that is, suited to ongoing financial and performance disclosure</li> </ul>		

COMPONENT	RAPID REVIEW	Y/N	GAP ASSESSMENT
DATA, TEMPLATE, AND STANDARD CONTRACT PROVISIONS	<ul style="list-style-type: none"> <li>• Instructions for filling the template are included as required</li> </ul> <p>There are standard contract provisions that provide the following:</p> <ul style="list-style-type: none"> <li>• Specific language for confidential information</li> <li>• Specified period for which the information will be confidential</li> <li>• Format for listing the specific confidentiality clauses of each contract</li> <li>• Clearly stated information the private provider is expected to maintain along with timelines for submission</li> <li>• Specified audit mandate with the extent of disclosure to audit</li> </ul>	N	<p>There are no templates, standard contract provisions, or data standards.</p> <p>The gap is assessed to be wide in this area.</p>
RESOURCES	<p>Budget is available</p> <p>Skilled, trained labor is available</p> <p>Technology and web platform(s) compatible with easy upload and download of information</p> <p>Security systems to prevent data and information tampering</p>	<p>N</p> <p>Y</p> <p>N</p> <p>Y</p>	<p>There is a platform, but it does not include all the desired features. Skilled labor is available, but PID staff is already stretched. Training for a more sophisticated web portal would be required. Budget is available but not for this specific purpose; PID and the contracting authorities might need to provide specifically for this as the number of projects increases.</p> <p>The gap here is assessed to be wide.</p>

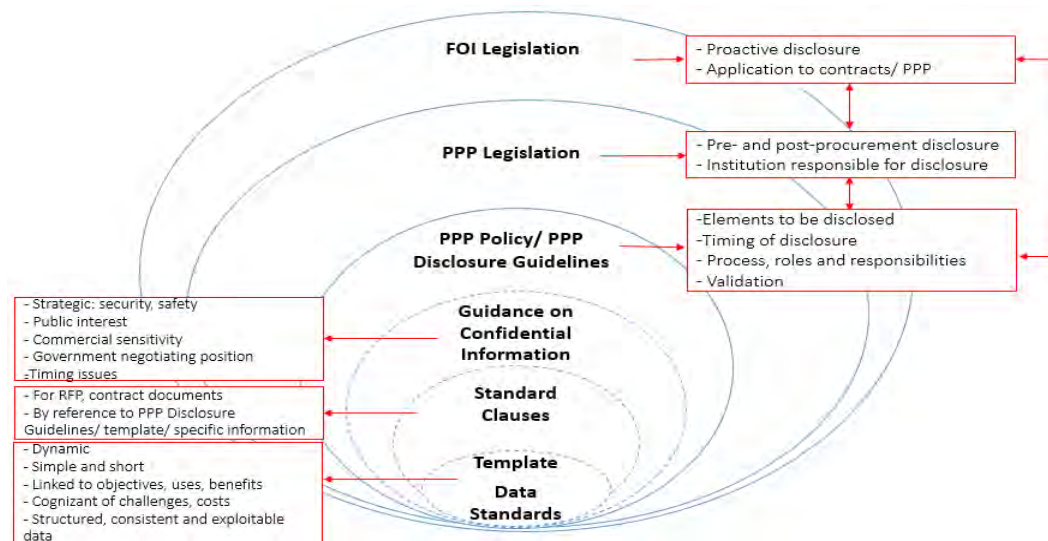
Note: PID = Public Investment Division; PPP = public-private partnership.

## 8. Recommendations

The direct and urgent factors that appear to induce governments to disclose, that is, the wider government policy on transparency and whether there is supportive legislation, have been achieved partially in Ghana. Ghana has an open environment and relatively low corruption, with very positive attitudes toward the idea of disclosing more information. However, the enactment of the PPP and RTI legislations, which would provide a clear legal mandate for disclosure over and above the government's policy commitments, has not happened yet. Government policy promotes transparency, but there is relatively little disclosure in practice. In addition, whatever disclosure happens is often unstructured and scattered on various websites, due to the lack of an institutional process and clearly delineated roles and responsibilities related to disclosure. The findings of this diagnostic suggest that enactment of the RTI and PPP Acts, creating an institutional framework for disclosure and embedding this into practice through standard contractual clauses, and a dedicated PPP project web portal could go a long way in ensuring greater disclosure in practice.

The World Bank's Framework for Disclosure in PPPs recommends a six-layer design (figure 4).

FIGURE 4: ELEMENTS OF THE WORLD BANK'S RECOMMENDED PPP DISCLOSURE FRAMEWORK



Note: FOI = Freedom of Information; PPP = public-private partnership; RFP = request for proposal.

The design of the Framework is based on the key drivers of disclosure, major factors influencing the drivers and challenges, benefits associated with disclosure, and uses and various categories of users of information once it is disclosed. Linked directly to these aspects is the issue of customizing disclosure based on specific PPP contract clauses, levels

of government support, and risk-sharing mechanisms within contracts. The Framework recommends the incorporation of the following key items in a country's disclosure framework:

- Mandate to disclose, through RTI, PPP, or other legislation or policy
- More detailed guidance on what, when, and how to disclose
- Elements of disclosure in different phases with a simple template
- Timelines for disclosure
- Guidance on confidential information
- Standard contractual clauses.

Based on the findings of the diagnostic and a gap assessment exercise benchmarked against the World Bank Framework, as detailed in the previous sections, this section makes a few focused recommendations on disclosure.

1. *Legislative mandate for disclosure.* In countries with strong institutional practices, legislation attempts to include in particular: (a) proactive disclosure; (b) specific coverage, preferably by direct mention of PPPs, or contracts and contract information, as well as performance and procurement information as part of the definition of information; (c) disclosure mechanisms, that is, how the information will be disclosed; and (d) redactions, that is, what information will not be disclosed. The degree of detail to be included in the legislation depends on each country's surrounding integrity risk environment, but it should provide enough detail to ensure sufficient accountability of the public and private actors involved in a project. The PPP bill, which lapsed in the last Parliament, mandated proactive disclosure by a proposed Partnerships Agency, and clearly listed the elements of project information that must be disclosed. Similarly, the RTI Act, which lapsed, also had provisions mandating proactive disclosure by the government. These draft clauses were sufficiently progressive and provided the mandate for proactive disclosure of information relating to PPPs. It is recommended that PID and the government push for the enactment of these two bills with renewed interest and enthusiasm.
2. *Framework for disclosure.* A full suite of instruments, as envisaged in the design of the World Bank's Disclosure Framework, could lead to sound and better disclosure practices in Ghana. A detailed suggested Framework for Disclosure for Ghana, based on five of the six layers of the World Bank Framework, is included as annex A. Table 6 presents a summary of the suggested contents.

**TABLE 6: SUGGESTED CONTENT FOR A PPP DISCLOSURE FRAMEWORK FOR GHANA**

CONTENT	DESCRIPTION
ELEMENTS TO BE DISCLOSED PROACTIVELY	<p>Specifics of disclosure at each stage of the PPP process, preferably an exhaustive list of items</p> <p>Given the nascent status of PPP in Ghana and the demands of onerous PPP disclosure requirements, the elements to be disclosed should remain limited to basic project information, key milestones, procurement, key contract features, redacted contract documents, renegotiations, and performance.</p>
PLACE OF DISCLOSURE	<p>Common PID/Ministry of Finance platform</p> <p>Responsibilities for populating and managing the platform shared between PID, the contracting authority, and SPV</p> <p>Technical assistance is being provided for the design and creation of the web portal under World Bank technical assistance.</p>
TIMELINES	<p>Specifics of timelines for each element</p> <p>Flexible timelines that take into account the internal processes involved</p> <p>Key procurement documents, such as RFQ, RFP, short-listed bidders, preferred bidder, and award disclosed upon approval</p> <p>Contract documents and performance information with reasonable lag times from 15 to 30 days for internal processes, such as removal of confidential information and validation of information</p> <p>Performance information on annual basis</p>
TREATMENT OF COMMERCIAL-IN-CONFIDENCE AND OTHER CONFIDENTIALITY PROVISIONS	<p>Elements guided by discussions with PID and its appetite for disclosure, with the following elements considered as confidential information, with the provision to revisit these in two to three years:</p> <ul style="list-style-type: none"> <li>Bids</li> <li>Bid evaluations (summary of bid evaluations is not confidential)</li> <li>Negotiations with the preferred bidder</li> <li>Trade secrets</li> <li>The base case financial model submitted by the preferred bidder</li> <li>Suggestion for additional case-by-case analysis in each instance</li> </ul>
VALIDATION PRIOR TO DISCLOSURE	<p>Given that there could be high costs to external validation, it is suggested that PID takes the responsibility for validation of disclosed information.</p>
TEMPLATE AND DATA STANDARDS	<p>A format for ensuring ease and uniformity in disclosure</p> <p>Uniformity can help in data aggregation by sector, risk profile, value, type, and so forth. A template is suggested as part of the Draft Framework.</p>

*Note:* PID = Public Investment Division; PPP = public-private partnership; RFP = request for proposal; RFQ = request for qualification; SPV = special purpose vehicle.

3. *Standard contractual clauses.* Clauses on information disclosure used in Ghanaian contracts so far are limited to reinforcing the confidentiality of information. It is

recommended that the Government of Ghana creates standard clauses on disclosure to provide specific language that must be included in PPP contracts by public authorities. These clauses would help government teams in appropriately negotiating provisions related to the responsibility of private providers, to provide information to the public authority, the rights and responsibilities of the public authority to disclose information, direct disclosure of the obligations of the SPV, and confidentiality provisions. These would also enable the government entity and the private party to understand their respective roles in disclosure prior to contract signing. Inclusion of clear disclosure provisions in the standard contract is also a good way to disseminate and educate investors and potential bidders about the government's approach to information disclosure. Standard clauses would also help greatly in institutionalizing disclosure. Annex A.2 suggests text for standard contractual provisions.

4. *Template and data standards.* Supply-side issues are a key impediment to timely and high-quality disclosure. This impediment could be mitigated by applying procurement strategies that provide bidders with incentives to compete on mechanisms to disclose information without unreasonably increasing internal costs. In addition, Ghana is in a position to support the transfer of technology, systems, and instruments that support building, processing, and disseminating the required information, and therefore could incorporate this as a substantial aspect of improving its disclosure framework. PID and the contracting authorities would need to work on systems for collection and aggregation of information. It is recommended that, to the extent possible, reports should be machine readable or provided as inputs into a shared information system and able to be turned into structured data that can be selectively converted into open data as required.

In addition, systems need to be built into the design of the disclosure framework that will enable continuous publishing of procurement as well as performance information and data as and when key changes happen. Linking and cross-referencing with other existing similar information sets or databases could be useful. Defining or using harmonized information standards could not only reduce human and financial resource challenges, but also allow for comparative analysis of infrastructure projects. A template for disclosure is provided in the suggested text for the Framework in annex A.1. A project portal is being created and will be provided to the Government of Ghana over the next few months.

5. *Strategic communication.* Disclosure of information appears to be influenced by a host of challenges and benefits. Key challenges appear to be the reluctance of public bodies to share information in the absence of a clear mandate, a dearth of practical internal guidance, non-availability or inaccuracy of data, time and cost of disclosure, and lack of oversight mechanisms. Sometimes, disclosed information becomes unusable, especially when it consists of full contract documents in the public domain. Challenges such as increased litigation and consequent delays during or after procurement may also arise for governments that disclose documents, feeding back into the general reluctance to share information.

Given the longer-term and distinct benefits of disclosing—such as greater accountability in expenditure, higher level of confidence in the fairness of the process, and better quality of bids, along with the potential for formulation of improved long-term PPP policies and practice—it is essential that these challenges are overcome. This can be done by building the right frameworks for disclosure, as suggested in this report, as well as by framing the discussion strategically, through well-planned communication with stakeholders.

Since the Framework recommends disclosure beginning with the entry of a project into the approved preliminary pipeline, it is important that strategic communication around projects and programs is formulated at an early stage. This requires making disclosure not a one-way process but a two-way interactive process, to ensure that the feedback loops are completed and the disclosed information is understood, absorbed, and used optimally by all stakeholders. Strategic communication also entails placing the project in the right context; benchmarking it in terms of tariffs (and costs) and services using available regional, national, and local benchmarks of existing projects; and discussing the pros and cons of different alternatives for providing services, highlighting the relative advantages of the selected alternative. It is also important to frame the discussion around other key issues, such as competition and confidentiality, which may be of concern to the private sector.



## 9. Key Materials Reviewed

Laws, Regulations, and Policy Documents of the Government of Ghana

Constitution of Ghana, 1992

Environmental Protection Agency Act, 1994

Open Government Partnership Action Plan, 2013–14

Open Government Partnership Action Plan, 2015–17

Petroleum (Exploration and Production) Act, 2016

Public-Private Partnership Bill, 2016

Public-Private Partnership Policy, 2011

Public Financial Management Act, 2016

Public Investment Management Policy, 2015

Public Procurement Act, 2003

Public Utilities Regulatory Commission Act, 1997

Right to Information Bill, 2016

Data Protection Act

Websites

Africa Freedom of Information Centre: <http://www.africafoicentre.org/>

Centre for Law and Democracy: <https://www.law-democracy.org/>

Ghana Open Data Initiative: <http://data.gov.gh/>

Government of Ghana eServices: <http://www.eservices.gov.gh/SitePages/Portal-Home.asp>

Ministry of Finance, Government of Ghana: <http://www.mofep.gov.gh/>

Open Government Partnership: <https://www.opengovpartnership.org/>

Parliament of Ghana: <http://www.parliament.gh/>

Private Participation in Infrastructure Database, World Bank: <https://ppi.worldbank.org/>

Public Investment Division, Ministry of Finance: <http://mofep.gov.gh/divisions/pid>

Transparency International: <https://www.transparency.org/>

United Nations Office on Drugs and Crime: <https://www.unodc.org/>

World Economic Forum: <https://www.weforum.org/>

# Annex A: Suggested Text for Disclosure Framework

## 1. Introduction

Section III (12) of the PPP Policy 2011 states that all public-private partnership (PPP) arrangements in Ghana shall be guided by the principles of transparency and accountability. The Public Financial Management Act 2016 (Act 921) similarly requires disclosure of certain pieces of information. Therefore, the Public Investment Division (PID), Ministry of Finance, Government of Ghana, seeks to enhance its PPP frameworks through building in systems of transparency and accountability, including processes conducive to disclosure, and to embed disclosure in routine PPP practice.

PPPs have been identified as enablers of the country's Vision 2020, and are fast gaining momentum in the country. Owing to the importance of transparency and information disclosure in enhancing the confidence of investors and other stakeholders, including the general public, the Government of Ghana's PID seeks to embed disclosure into its PPP process and institutions. The objective of this Framework is to provide guidance to enable systematic and organized disclosure of information at different stages of the PPP process. Since disclosure is an evolving area, this Framework will be revisited and revised every two to three years, if and as required.

## 2. Application

This Framework will apply to all PPP projects initiated under the PPP Policy 2011, including projects initiated by local governments and unsolicited proposals.

## 3. Specific Disclosures

- a. Specific disclosures will consist of the elements included in the following Subsections b to i, and will follow table A.1 and the template provided in annex A.1. Confidential information, as provided under Section 4, will be redacted before publication.
- b. *Basic project information.* Basic project information along with estimated dates for key milestones will be provided within 15 days of approval of the concept note. Basic project information will include the project name, location, sector, sponsoring agency, indicative value, project need, description of assets and

services to be provided, and the rationale for selecting the project for development as a PPP.

- c. *Project progress tracking.* Dates of achievement of key milestones will be provided as the project progresses, in the form of a project progress tracker.
- d. *Feasibility study.* The Feasibility Study Report will be published after approval and before the issue of the request for qualification (RFQ). The Value for Money Analysis Report will be disclosed within 30 days of signature of the contract.
- e. *Procurement information.* Summary procurement information and key documents will be provided during the procurement process. The RFQ, list of short-listed bidders, request for proposal, and award will be published immediately after approval.
- f. *Project summary.* Summary information on the PPP contract will be provided within 30 days of commercial close. The project summary will include basic contract information, including the parties to the contract, project risk matrix (limited to major risks), amounts and types of government support provided to the project, information on tariffs and pricing, termination clauses, handback provisions, and key performance indicators with target levels. Information on the financial structure of the special purpose vehicle (SPV) will be provided within 30 days of financial close.
- g. *Contract documents.* All contract documents will be disclosed within 30 days of commercial close.
- h. *Renegotiations.* Summary information relating to each renegotiation will be published within 30 days of signature of the renegotiated contract. At that time, the renegotiated contract will be published.
- i. *Performance information.* Information on the performance of the private party on five to 10 selected key performance indicators against agreed target levels will be published within one year of the commissioning of the project, with annual updates. Performance information will include details on performance failures and will be updated annually. Links to performance assessments, such as audit reports, private party reports (SPV self-reporting), and independent engineer reports (that do not relate to dispute resolution), will be provided and updated annually.

TABLE A.1: SUMMARY OF SPECIFIC DISCLOSURES

#	DOCUMENT	CONTENTS	CREATOR	APPROVER FOR PUBLIC DISCLOSURE	TIME OF DISCLOSURE
1	Basic project information	Project name Location Sector Sponsoring agency	CA	PID	Within 15 days after approval of concept note

#	DOCUMENT	CONTENTS	CREATOR	APPROVER FOR PUBLIC DISCLOSURE	TIME OF DISCLOSURE
		Indicative value Project need Description of assets and services to be provided Rationale for selecting the PPP mode Estimated dates of key milestones Stakeholder Consultations			
2	Project progress tracking	A section on the web-based platform that will reflect dates of achievement of key milestones	PID until commissioning of project; CA from commissioning of project until end of contract	PID/CA	Within 15 days of approval of concept note and within 15 days of each status change
3	Feasibility Study Report including Environment and Social Impact Scoping Study		CA	PID	Upon approval and before RFQ
4	Value for Money Report		CA	PID	Within 30 days of signature of contract
5	RFQ		CA/PID	PID	As soon as procurement documents are approved
6	List of short-listed bidders and evaluation summary report		CA/PID	PID	As soon as bidders are short-listed
7	Full RFP		CA/PID	PID	Upon approval
8	Announcement of selected bidder and evaluation summary report		CA/PID	PID	As soon as decision is approved

#	DOCUMENT	CONTENTS	CREATOR	APPROVER FOR PUBLIC DISCLOSURE	TIME OF DISCLOSURE
9	Project summary	Parties to the PPP agreement Project risk matrix (limited to major risks) Government support Tariffs and pricing Termination clauses Handback provisions Key performance indicators with agreed target levels	CA/private party	PID	Within 30 days of commercial close
10	Financial structure of SPV		CA/private party	PID	Within 30 days of financial close
11	Contract Documents	All contract documents	CA	PID	Within 30 days of commercial close
12	Renegotiations and renegotiated contracts	Summary information relating to each renegotiated Renegotiated contract documents	CA	PID	Within 30 days of signature of renegotiated contract
13	Performance Information	Performance of the private party on five to 10 selected key performance indicators against agreed targets Audit report Private party (SPV) reports Independent engineer reports (not related to dispute resolution)	Private party/CA Link to audit report provided by PID Private party reports uploaded by SPV Independent engineer reports uploaded by PID	PID	Within one year of commissioning of the project and updated annually

Note: CA = contracting authority; PID = Public Investment Division; PPP = public-private partnership; RFP = request for proposal; RFQ = request for qualification; SPV = special purpose vehicle.

## 4. Confidential Information

For the purposes of this Framework, the following elements will be considered as confidential. However, these elements will be reviewed every two to three years for any modifications.

- a. Bids
- b. Bid evaluations
- c. Negotiations with the preferred bidder
- d. Trade secrets and any other proprietary information
- e. The base case financial model submitted by the preferred bidder

## 5. Method of Disclosure

All information and documents will be published on a web-based platform owned by PID, Ministry of Finance, and any other media platforms as defined in the PPP Policy 2011.

The web-based platform may also be integrated into the PPP procurement process whereby MDAs could use the platform to submit project-related documents such as project proposals, feasibility studies, ESIA reports, VfM reports, RFQ / RFP documents and PPP contracts etc. to PID for review and approval as the case may be. The use of the web-based platform for such internal document management processes could be mandated through PPP Procurement Guidelines issued by PID.

## 6. Responsibilities for Disclosure

- a. The onus for information generation and uploading on the web-based platform will be shared by PID, the contracting authority, and the private party to the contract.
- b. All information will be uploaded by the contracting authority on the PID website, as provided in Section 3, after redacting confidential information.
- c. The contracting authority will upload all information and documents to the web-based platform, so as to leave at least seven days within the given timelines for PID to validate and approve the information for public disclosure.
- d. Performance information and any other information required by PID and the contracting authority will be provided by the private party to the contract from time to time.

## 7. Validation of Information Prior to Disclosure

All information shall be validated by the Director of PID and/or any officer who has been delegated this responsibility before publication on the website.

## 8. Standard Contractual Provisions

- a. A section or chapter entitled “Transparency and Information Disclosure” shall be included in all draft contractual documentation included in the request for proposal (RFP) and in all PPP contracts to be signed by the contracting authorities, including county governments.
- b. The section or chapter mentioned in 8.a will contain clauses pertaining to the proactive disclosures to be carried out by the contracting authority, including disclosure of summary project and contract information, contract documents, and procurement information, including procurement documents and ongoing performance information disclosure.
- c. The section or chapter mentioned in 8.a will also contain the obligations of the private entity to provide documents and information as and when required, and in the format required by the contracting authority as part of its service obligations, with consequential payment deductions should there be a failure to provide information on the part of the private party.
- d. The section or chapter mentioned in 8.a will include a subsection dealing with confidential information, and will list the items of confidential information in a schedule along with the date up to which the information will be considered confidential.
- e. The contract will be structured in a way such that confidential information can be easily removed before publication of the contract.
- f. Sample disclosure clauses, for use in all draft contract documentation included in the RFP and in all contracts, are provided in annex A.2 and its schedules.

# Annex A.1: Draft Template for Proactive Disclosure of Projects in Ghana

## *DISCLOSURE DURING PROJECT IDENTIFICATION, DEVELOPMENT AND PROCUREMENT STAGES*

### BASIC PROJECT INFORMATION

(Disclosed at identification phase within 15 days of approval of concept note, updated at feasibility study stage and commercial close)

- Project name
  - Location
  - Sector
  - Sponsoring agency/department
  - Indicative project value
  - Project need
  - Description of asset
  - Description of services
  - Rationale for selection of PPP mode (*including value for money report within 30 days of commercial close*)
  - Stakeholder consultations
- 

### PROJECT MILESTONES (ESTIMATED AND ACTUAL)

*(disclosed as they become available; within 15 days of each status change)*

- Project proposal received
- Project proposal screened
- Project proposal enters national priority list of projects
- Project feasibility study under development
- Project feasibility study approved
- Request for qualification
- Request for proposal
- Award
- Commercial close
- Financial close
- Commencement of construction or development
- Completion of construction or development
- Commissioning
- Contract expiry



## PROCUREMENT DOCUMENTS

- Feasibility Study Report (disclosed after approval and before RFQ with redaction of financial model)
- Environment and Social Impact Scoping Study (disclosed after approval)
- Request for qualification (disclosed immediately after approval)
- Short-listed bidders and evaluation summary report (disclosed immediately after approval)
- Request for proposal (disclosed immediately after approval)
- Award and evaluation summary report (disclosed after approval of award)

### *DISCLOSURE FOLLOWING SIGNATURE OF CONTRACT*

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## PROJECT SUMMARY AND CONTRACT INFORMATION

(disclosed within 30 days of commercial close and updated in case of any change)

- Contracting authority: name of authority, name of representative, address, telephone, fax, e-mail
- Private party: name of company or consortium, name of representative, address, telephone, fax, e-mail
- Financial structure: (figure showing debt/equity/proportion/providers) (provide link to company registry) (This will be disclosed within 30 days of financial close.)

## CONTRACT DOCUMENTS

Project Contract documents

ESIA (Final Environment and Social Impact Assessment Report)

<b>RISK</b>	<b>DESCRIPTION</b>	<b>ALLOCATION</b>
<b>GOVERNMENT SUPPORT</b>		
Guarantees		
Grants		
Availability/annuity payment schedule		
Land leases, asset transfers		
Other support		
Revenue share, if any		

**TARIFFS**

Tariffs and pricing
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**TERMINATION PROVISIONS**

PARTY	BRIEF DESCRIPTION OF EVENT OF DEFAULT
Concessionaire	
Authority	
Handback terms and conditions	

**RENEGOTIATIONS**

RENEGOTIATION 1	RENEGOTIATION 2	RENEGOTIATION 3	RENEGOTIATION 4

**PERFORMANCE INFORMATION** *(to be updated annually)*

KEY PERFORMANCE INDICATORS	Year 1		Year n	
	Target	Achievement	Target	Achievement

Performance failures	Year
	Category of failure
	Number of events
	Penalty or abatement provided in contract
	Penalty or abatement imposed
	Penalty paid or abatement effected: Yes/No

<b>Performance assessments</b>	Audit reports (if any), special purpose vehicle reports, independent engineer reports
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# Annex A.2: Standard Contractual Provisions

## Section [*insert number*]: DISCLOSURE REQUIREMENTS

### *Obligations Regarding Specific Disclosures*

#### 1. Right to Information

- 1.1 The [Private Party] acknowledges that the [Contracting Authority] is subject to the requirements of the (Constitution), Public-Private Partnership (PPP) Policy 2011, and may be entitled to disclose information without consulting or obtaining the consent of the [Private Party].
- 1.2 The [Private Party] agrees to facilitate the [Contracting Authority's] compliance with its disclosure requirements under PPP Policy 2011.
- 1.3 Where the [Contracting Authority] receives a request for information in relation to information that the [Private Party] is holding and which the [Contracting Authority] does not hold itself, the [Contracting Authority] shall refer to the [Private Party] such request for information that it receives as soon as practicable and in any event within [five] business days of receiving the request and the [Private Party] shall
  - (a) Provide the [Contracting Authority] with a copy of all such information in the form the [Contracting Authority] requires as soon as practicable and in any event within [10] business days (or such other period as the [Contracting Authority] acting reasonably may specify) of the [Contracting Authority's] request; and
  - (b) Provide all necessary assistance as reasonably requested by the [Contracting Authority] in connection with any such information to enable the [Contracting Authority] to respond to a request for information in accordance with PPP Policy 2011.
- 1.4 The [Private Party] shall ensure that all information held on behalf of the [Contracting Authority] is retained during the term of this PPP Agreement for at least [ ] years after the expiry or termination of the PPP Agreement and shall permit the [Contracting Authority] to inspect such information as requested from time to time.
- 1.5 Where the [Contracting Authority] receives a request for information, the [Contracting Authority] shall be responsible for determining at its absolute discretion whether information is exempt from disclosure, and for determining what information will be disclosed.

#### 2. Public Relations and Publicity

- 2.1 The [Private Party] shall not by itself, its employees, or agents, and procure that its subcontractors shall not, communicate with representatives of the press, television, radio, or other communications media on any matter concerning this PPP Agreement without the prior written approval of the [Contracting Authority].
- 2.2 The [Private Party] may not represent the views of the [Contracting Authority] on

any matter, or use the name of the [Contracting Authority] in any written material provided to third parties, without the prior written consent of the [Contracting Authority].

### 3. Publication of Information Related to the PPP Project

- 3.1 The parties agree that the [Contracting Authority], subject to Section 4 (Confidentiality) below, is entitled to disclose, as detailed in Schedule [ ], the following information:
- (a) Procurement documents and information
  - (b) All contract documents, including this PPP Agreement and other associated documents (such as the Feasibility Study Report and the Value for Money Analysis Report)
  - (c) Summary contract information as set out in Schedule [ ] of this PPP Agreement
  - (d) Performance information related to this PPP Agreement.
- 3.2 The [Private Party] acknowledges that the [Contracting Authority] intends to publish the information mentioned in Subsection 3.1 above, subject to Section 4 (Confidentiality), on a web-based platform owned by the Government of Ghana.

### 4. Confidentiality

#### **Confidential Information**

- 4.1 For the purpose of this PPP Agreement, confidential information means
- (a) The subset of confidential information included in column 1 of Schedule [ ] of this PPP Agreement, in each case for the period specified in column 2 of Schedule [ ].
  - (b) Any other information (however it is conveyed or on whatever media it is stored) that may fall within the definition of “confidential information.”
- 4.2 Without prejudice to Sections 1 and 3, the parties shall keep confidential all confidential information received by one party from the other party relating to this PPP Agreement, and any other project agreements or the PPP project, and shall use all reasonable endeavors to prevent their employees and agents from making any disclosure to any person of any such confidential information.

#### **Permitted Disclosure**

- 4.3 Confidential information may be disclosed if:
- (a) Disclosure of such confidential information is reasonably required by any person engaged in the performance of its obligations under the PPP Agreement for the performance of those obligations;
  - (b) A party can demonstrate that such confidential information is already, or becomes, generally available in the public domain otherwise than as a result of a breach of this clause;
  - (c) Such disclosure is necessary to enable a determination to be made under clause [insert reference to Dispute Resolution clause] or in connection with a dispute between the [Private Party] and any of its subcontractors;

- (d) Such disclosure is required pursuant to (i) any statutory or legal obligation, (ii) any order of a court of competent jurisdiction, (iii) a parliamentary obligation placed upon the party making the disclosure, (iv) the rules of any stock exchange, or (v) any order from a governmental or regulatory authority;
- (e) The confidential information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (f) The confidential information is provided to:
  - (i) Each party's own professional advisers or insurance advisers; and/or
  - (ii) The lenders or the lenders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation, or otherwise) to the [Private Party] to enable it to carry out its obligations under the PPP Agreement, or may wish to acquire shares in the [Private Party] in accordance with the provisions of this PPP Agreement to that person or their respective professional advisers, but only to the extent reasonably necessary to enable a decision to be taken on the proposal; and/or
  - (iii) International or bilateral financial institutions involved in the PPP project as lenders, political risk insurers, or guarantors;
- (g) The disclosure of such confidential information by the [Contracting Authority] relates to the design, construction, operation, and maintenance of the PPP project, and any disclosure of other confidential information as may be reasonably required for the purpose of conducting a due diligence exercise, to any proposed new private partner, its advisers and lenders, should the [Contracting Authority] decide to retender the PPP Agreement or undertake any market testing;
- (h) Such disclosure is required for any registration, filing, or recording of the required permits and property registration in connection with the PPP project;
- (i) The disclosure of confidential information by the [Contracting Authority] to any other relevant authority or their respective advisers or to any person engaged in providing services to the [Contracting Authority] is necessary for any purpose related to or ancillary to the PPP Agreement; or
- (j) Such disclosure is necessary for the purpose of:
  - (i) The examination and certification of the [Contracting Authority's] or the [Private Party's] accounts;
  - (ii) Any examination pursuant to [insert reference to any auditing obligations for public contracts] of the economy, efficiency, and effectiveness with which the [Contracting Authority] has used its resources;

(iii) Compliance with a proper request from either party's insurance adviser or insurer on placing or renewing any insurance policies; or

(iv) Without prejudice to the generality of Clause 4.3 (d), compliance with [insert reference to any laws requiring disclosure (e.g., environmental laws)].

- 4.4 When disclosure is permitted under Clauses 4.3 (a), (c), (f), (g), and (i), the party providing the information shall ensure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this PPP Agreement. The [Private Party] shall expressly inform any person to whom it discloses any information under this clause of the confidentiality restrictions set out in this clause, and shall procure its compliance with the terms of this clause as if it were party to this PPP Agreement, and the [Private Party] shall be responsible for any breach by any such person of the provisions of this clause.
- 4.5 The provisions of Section 4.3 are not applicable to [insert relevant exceptions for specific project] (e.g., national security information as prescribed in Section (b) (I) (1) of the PPP Policy, 2011).

#### **Confidential Information Related to End Users**

- 4.6 In relation to all personal data, the [Private Party] shall at all times comply with the Data Protection Act (DPA) 2012, as a data controller if necessary, including maintaining a valid and up-to-date registration or notification under the DPA, covering the data processing to be performed in connection with the PPP Agreement.
- 4.7 Where the [Private Party], in carrying out its obligations under the PPP Agreement, is provided with personal information relating to [end users (e.g., prisoners, patients, pupils)], the [Private Party] shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the [Private Party] has obtained the prior written consent of that [end user] and has obtained the prior written consent of the [Contracting Authority].
- 4.8 On or before the expiry date, the [Private Party] shall ensure that all documents or computer records in its possession, custody, or control, which contain personal information relating to [end users], including any documents in the possession, custody, or control of a subcontractor, are delivered to the [Contracting Authority].

### 5. Reporting Obligations and Provision of Information and Documents

#### **5.1 Obligation to Disclose Information, Documents, and Records upon Request**

- 5.1 (a) The [Private Party] shall provide to the [Contracting Authority] all information, documents, records, and the like in the possession of, or available to, the [Private Party] as may reasonably be requested by the [Contracting Authority] for the purpose of complying with any of its statutory reporting obligations, including its reporting obligations under the Public Financial Management Act, 2016, and the Public-Private Partnership Policy, 2011.

(b) To this end, the [Private Party] shall ensure that all such information in the possession of any subcontractor or other counterparty to any Project Agreement shall be available to the [Contracting Authority], and the [Private Party] has

included, or shall include, appropriate provisions to this effect in all Project Agreements.

### **Project Information**

5.2 (a) The [Private Party] shall provide to the [Contracting Authority] a project summary as set out in Schedule [ ] of this PPP Agreement within seven business days after signature of this PPP Agreement, and an updated version, including information on the financial structure of the special purpose vehicle (SPV) within seven business days after financial close [insert definition for financial close].

(b) In the event of any relevant change of this project information, the [Private Party] shall provide to the [Contracting Authority] the updated information and links to the updated documents [ ] business days after the relevant change has occurred.

### **Performance Information**

5.3 The parties agree that the [Private Party] shall provide to the [Contracting Authority] information relating to performance as set out in Schedule [ ] of this PPP Agreement each year during the term of this PPP Agreement.

### **Calculation of Equity Internal Rate of Return**

5.4 The [Private Party] shall provide to the [Contracting Authority] each year during the term of this PPP Agreement on [ ] and on [ ] a calculation of the actual equity internal rate of return and any other financial information submitted to any other authority, including any regulators.

### **Audited Financial Statements**

5.5 The [Private Party] shall provide to the [Contracting Authority] audited financial statements annually and no later than [90] days after the end of the fiscal year of the [Private Party].

### **Enforcement of Reporting and Information Obligations**

5.6 The parties agree that the scope of services under this PPP Agreement includes obligations of the [Private Party] to provide information as set out in [Section/Subsection [ ] to the [Contracting Authority], and that any breach of this obligation shall be a failure in performance of the service, triggering deductions in accordance with the payment mechanism as set out in Schedule [ ] of this PPP Agreement.

Schedule [ ]

Format for submission of summary project information for disclosure

**CONTRACT INFORMATION** (Submitted within 7 days of commercial close and updated at financial close and in case of any change.)

- Contracting authority: name of authority, name of representative, address, telephone, fax, e-mail
- Private party: name of company or consortium, name of representative, address, telephone, fax, e-mail
- Financial structure: (figure showing debt/equity/proportion/providers) (provide link to company registry) (to be provided within 7 days of financial close)
- PROJECT DOCUMENTS

RISK	DESCRIPTION	ALLOCATION

**GOVERNMENT SUPPORT**

Guarantees
Grants
Availability/ annuity payment schedule
Land leases, asset transfers
Other support
Revenue share, if any

**TARIFFS**

Tariffs and pricing
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**TERMINATION PROVISIONS**

PARTY	BRIEF DESCRIPTION OF EVENT OF DEFAULT
Concessionaire	
Authority	
Handback terms and conditions	

**RENEGOTIATIONS**

RENEGOTIATION 1	RENEGOTIATION 2	RENEGOTIATION 3	RENEGOTIATION 4

*Schedule [ ]*

*Format for submission of performance information for public disclosure*

**PERFORMANCE INFORMATION** *(key performance indicators and target summary to be submitted within 7 days of commercial close, and achievement and performance failure information to be updated annually)*

KEY PERFORMANCE INDICATORS	Year 1		Year n	
	Target	Achievement	Target	Achievement

Performance failures

YEAR	
Category of failure	
Number of events	
Penalty or abatement provided in contract	
Penalty or abatement imposed	
Penalty paid or abatement effected: Yes/No	

<b>Performance assessments</b>	SPV reports
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Schedule [ ]

*Penalties for noncompliance with the obligation to provide information*

Period of delay in compliance	Penalty

Schedule [ ]

Confidential information

Clauses/schedules	Period for which information will remain confidential

# Annex B: Comparison of World Bank and Agreed Frameworks with Current Practice

	WORLD BANK FRAMEWORK	CURRENT DISCLOSURE PRACTICE	AGREED FRAMEWORK
<b>1.</b>	<b><i>BASIC PROJECT INFORMATION</i></b>		
1.1.	Name	Y	Y
1.2.	Location	Y	Y
1.3.	Sector	Y	Y
1.4.	Sponsoring agency/department	Y	Y
1.5.	Estimated project value	Y	Y
1.6.	Project need: benefits provided, economic and social (including specific information on the public interest aspect)	Y/N	Y
1.7.	Stakeholder consultations	N	Y
1.8.	Reason for selection of PPP mode and type in brief	N	Y
1.9.	Brief description of other modes analyzed and reasons for rejecting these	N	Y
1.10.	Technical description of the physical infrastructure	N	Y
1.11.	Dates of various approvals	N	Y
1.12.	High-level description of the services	Y	Y
1.13.	Estimated demand to be served annually	N	Y
1.14.	Project additionality	N	Y
<b>2.</b>	<b><i>CONTRACT MILESTONES AND DOCUMENTS</i></b>		
2.1.	Date of commercial close	N	Y
2.2.	Date of financial close	N	Y
2.3.	Date of commencement of construction or development	N	Y
2.4.	Date of completion of construction or development	N	Y
2.5.	Date of commissioning	N	Y
2.6.	Date of contract expiry	N	Y
2.7.	All contract documents (with appropriate redactions)	N	Y

3.	<i>PARTIES TO THE CONTRACT WITH CONTACT DETAILS</i>		
3.1.	Public authority: name of authority, name of representative, address, telephone, fax, e-mail	N	Y
3.2.	Private party: name of company or consortium, name of representative, address, telephone, fax, e-mail	N	Y
3.3.	Financiers: name of lead financial institution (FI), other FIs, name of representative of lead FI, address, telephone, fax, e-mail	N	Y
4.	<i>PROCUREMENT INFORMATION</i>		
4.1.	Dates and summary details	Y	Y
4.2.	Final feasibility study (including cost-benefit analysis, if any)	N	Y
4.3.	Land acquisition, rehabilitation, and social (including information on human rights impact assessment) and environmental assessment-related information	N	Y
4.4.	Reports of independent procurement auditors (if any)	N	Y
4.5.	<i>Procurement documents</i>		
4.5.1.	Request for qualification	Y	Y
4.5.2.	Pre-qualification or short list	Y	Y
4.5.3.	Request for proposal	Y/N	Y
4.5.4.	Evaluation criteria: brief description with weightage	N	Y
4.5.5.	Brief information on constitution of the evaluation committees	N	N
4.5.6.	Negotiation parameters: brief description of the parameters for negotiation with preferred proponent	N	N
4.5.7.	Minutes of pre-bid meetings	N	N
4.5.8.	Selection of preferred bidder	Y	Y
5.	<i>RISK</i>		
5.1.	Pre-construction risk: all risks up to financial close	N	Y
5.2.	Construction/completion	N	Y
5.3.	Cost risk: capital, operating	N	Y
5.4.	Refinancing risk	N	Y
5.5.	Risk related to change in law, taxes, scope, technical standards, regulatory framework	N	Y
5.6.	Exchange rate risk	N	Y

5.7.	Operating risk	N	Y
5.8.	Commercial risk, market risk, demand risk	N	Y
5.9.	Performance risk	N	Y
5.10.	Financial risk	N	Y
5.11.	Force majeure risk	N	Y
5.12.	Environmental risk	N	Y
5.13.	Social risk	N	Y
6.	<i>EVALUATION OF PPP OPTION (VALUE FOR MONEY OR OTHER APPROACH USED)</i>	N	Y
6.1.	Evaluation report (value for money or other)	N	Y
6.2.	Rationale for doing the project as a PPP, including any qualitative or quantitative value-for-money, final feasibility studies (including cost-benefit analysis, if any) or other analysis that might have been used, including nonfinancial benefits that have been quantified or considered	N	Y
6.3.	Discount rates used along with the risk premium used, if any, and an explanation for the rate of risk premium used, referring to guidance, if any, available in this regard or describing project-specific circumstances that justify the risk premium rate used	N	Y
6.4.	Risk comparison of other financing mechanisms	N	Y
7.	<i>FINANCIAL INFORMATION</i>	N	Y
7.1.	Equity-debt ratio	N	Y
7.2.	Share capital	N	Y
7.3.	Shareholders with proportion held and voting rights	N	Y
7.4.	Details of any provisions related to contracts providing for caps on equity transfer in different stages of the contract, especially during the construction stage and for a few years thereafter	N	Y
7.5.	Commercial lenders, institutional investors, bilateral or multilateral lenders, public issue of bonds, supplier credit, other	N	Y
7.6.	Categorize senior debt, mezzanine debt, other	N	Y
7.7.	Amount and tenor of each, fixed or floating rate	N	Y
7.8.	Security and step-in arrangements	N	Y

7.9.	Forecast internal rate of return	N	Y
8.	<i>GOVERNMENT SUPPORT</i>	N	Y
8.1.	Guarantees (type and details of the guarantees provided—both explicit and contingent guarantees)	N	Y
8.1.1.	Minimum revenue guarantee	N	Y
8.1.2.	Exchange rate guarantee	N	Y
8.1.3.	Debt repayment guarantee	N	Y
8.1.4.	Other guarantees	N	Y
8.1.5.	Fiscal commitments and contingent liability disclosure reports	N	Y
8.2.	Grants	N	Y
8.2.1.	Subsidy as a proportion of project value	N	Y
8.2.2.	Capital subsidies paid during construction with periodicity or milestones	N	Y
8.2.3.	Operating subsidies and their periodicity or milestones	N	Y
8.3.	Service payments (payments made by the public authority or purchaser to the private provider for infrastructure services (applicable in private finance initiative–type projects))	N	Y
8.3.1.	Total payments and periodicity	N	Y
8.3.2.	Methodology for calculating payments	N	Y
8.3.3.	Indexation used	N	Y
8.4.	Land leases, asset transfers	N	Y
8.4.1.	Property numbers with the quantum of land transferred	N	N
8.4.2.	Zoning information of land	N	N
8.4.3.	Conditions of transfer of land	N	Y
8.4.4.	Equipment transfers: details of equipment with conditions of transfer	N	N
8.4.5.	Human resources/personnel transfers: details and conditions of transfer	N	Y
8.5.	Other support	N	Y
8.5.1.	Non-complete clauses	N	Y
8.5.2.	Provision for revenue shortfall loan	N	N
8.6.	Revenue share, if any	N	Y
8.6.1.	Revenue share on base case	N	N
8.6.2.	Revenue share on upside	N	N
8.6.3.	Graphs: annual concessionaire payments to government	N	Y
9.	<i>TARIFFS</i>	N	Y

9.1.	Tariffs and pricing (where the infrastructure is financed partly or fully through the levy of user charges)	N	Y
9.1.1.	Methodology for tariff setting/pricing	N	Y
9.1.2.	Scope for reviews of tariff, pricing, regulatory mechanisms	N	Y
9.1.3.	Graphs: tariff increases over time, consumer price index movement	N	Y
10.	<i>CONTRACT TERMINATION</i>	N	Y
10.1.	Concessionaire: events of default, termination payments made, methodology used for total payments	N	Y
10.2.	Authority: events of default, termination payments made, methodology used for total payments	N	Y
11.	<i>RENEGOTIATIONS</i>	N	Y
11.1.	Nature of variation	N	Y
11.2.	Rationale for variation	N	Y
11.3.	Change in roles and responsibilities of the parties due to the variation, if any	N	Y
11.4.	Change in original risk allocation due to the variation, if any	N	Y
11.5.	Change in original fiscal commitments or contingent liabilities of government due to the variation, if any	N	Y
11.6.	Change in capital or operational costs due to the variation, if any	N	Y
11.7.	Change in tariffs or service levels due to the variation, if any	N	Y
11.8.	Date of variation	N	Y
12.	<i>PERFORMANCE INFORMATION</i>	N	
12.1.	Annual demand levels	N	Y
12.2.	Annual revenues (where revenue share clauses or other related clauses, such as minimum revenue guarantees, are present in the contract)	N	Y
12.3.	Actual internal rate of return (where there is government equity investment or other form of government support that is substantial)	N	Y
12.4.	Performance (actual year-wise performance against 10 to 12 identified key performance indicators)	N	Y
12.5.	Performance failures	N	Y
12.5.:	Year	N	Y
12.5.:	Category of failure	N	Y

12.5.:	Number of events	N	Y
12.5.:	Penalty or abatement provided in contract	N	Y
12.5.:	Penalty or abatement imposed	N	Y
12.5.:	Penalty paid or abatement effected	N	Y
12.6.	Performance assessments	N	Y
12.6.:	Audit reports	N	Y
12.6.:	Independent performance assessments of the independent engineer	N	Y
12.6.:	Any other performance reports available for the project	N	Y





The World Bank Group provides assistance to governments in developing countries to improve access to infrastructure and basic services through public-private partnerships (PPPs). When designed well and implemented in a balanced regulatory environment, PPPs can bring great efficiency and sustainability to the provision of such public services as water, sanitation, energy, transport, telecommunications, healthcare, and education.

The World Bank Group's unique value proposition rests with its capacity to provide support along the entire PPP cycle—upstream policy and regulatory guidance, transaction structuring advice, as well as financing and guarantees to facilitate implementation.



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