

In your jurisdiction, how has the concept of public-private partnership (PPP) evolved? In your jurisdiction, what forms of transactions are authorized and often used?

PPPs were created to address the infrastructural gap. They are viewed as a viable alternative to the traditional procurement system, in which infrastructure and related services are delivered by the state or government.

The current PPP framework is the National Policy on Public-Private Partnerships (the Policy), which defines a PPP as "a contract between a public entity and a private sector party with clear agreement on shared objectives for the provision of public infrastructure and services traditionally provided by the public sector.

" Additionally, the policy specifies that in a PPP partnership, the private-sector participant must fulfill a portion or all of a government service delivery function and bear related risks for an extended length of time.

In Ghana, various forms of PPPs have been used, including:

1. build-transfer;
2. build, lease, transfer;
3. build-operate-transfer;
4. build-own-operate;
5. build-own-operate-transfer;
6. build-transfer-operate;
7. contract add-operate;
8. develop-operate-transfer;
9. rehabilitate-own-operate;
10. construct-own-operate-maintain;
11. operate-transfer.
12. Categorizations covered

In your jurisdiction, which categories of public infrastructure are subject to PPP transactions?

PPP initiatives are currently applicable to all sectors and should be pursued where they represent high-priority projects that are affordable to the government or end users, provide value for money, and allow for appropriate risk transfer.

Transportation (railways, roads, and ports), sports infrastructure, information

technology infrastructure, hospitals, office buildings, educational infrastructure, and other social infrastructure, such as markets, are some of the first things we'll look at.

STATUTORY FRAMEWORK

Is there a law in your country that governs PPPs, or do PPPs happen on a one-off basis under broad government authority?

While a variety of laws permit certain statutory institutions (for example, the Ghana Highway Authority) to enter into PPP arrangements, there is currently no centralized legislation governing PPPs.

The government established the policy on June 3, 2011 as the basis for implementing PPPs.

As a result, PPPs are currently being implemented in compliance with the policy, sector-specific legislation, and general-application legislation.

There are, however, efforts to pass a PPP law to regulate PPPs, even though there is no timetable for the proposed PPP Bill's passage.

AUTHORITIES WHO ARE PERTINENT

Is there a centralized public-private partnership authority, or may each agency run its own program?

Under the policy, the Ministry of Finance (MoF) is responsible for developing the legal, institutional, and regulatory framework for the PPP programme through its Public Investment Division (PID).

Additionally, the PID functions as the secretariat for all PPP-related operations. The PPP Approval Committee, an inter-ministerial approval authority, has been established to approve the implementation of PPPs.

The chair of the Committee is the Minister of Finance, who may set rules for how to run PPP projects in the right situations.

The PID's PPP Advisory Unit provides technical expertise to assist relevant ministries, departments, and agencies in developing and managing prospective transactions.

In addition, it has the Project Financial Analysis Unit, which does gatekeeping with the help of the other units.

PROCUREMENT

Are PPPs only bought at the federal level, or can state, local, and other government bodies also buy them?

PPPs can be done on a national level by the government through relevant ministries, departments, or agencies, or on a local level by metropolitan, municipal, or district assemblies. They can also be done by the government itself.

REMUNERATION

In your jurisdiction, how is the private party compensated in a PPP?

The private party could get back its money in any of the following ways:

service tariffs or user charges levied by a private party on end users or customers in exchange for a service provided by the private party

payments made from the government's budget, which may be fixed in whole or in part, or

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Sharing revenue and risk associated with usage

Is it possible for the private party and the government to share revenue or usage risk? How is risk distributed?

Risk allocation is one of the policy's driving principles. Risk is allocated to the party that is most equipped to control and manage it in order to maximize value for money.

Revenue or use risk is then split up on a case-by-case basis in the same way as the previous method.

OBLIGATIONS OF THE GOVERNMENT

When a private party is reimbursed in whole or in part by the government through the availability of funds or other periodic payments, are the

government's payment obligations contingent on the relevant legislative body approving future budgetary funding?

Yes. Government payments are governed by a variety of legislative and constitutional requirements that govern how the government spends its money, whether through the budgetary process or through special funds established for specific reasons (e.g., the infrastructure fund). All of the foregoing requires parliamentary approval.

LIMITS ON RETURN RATES

Is there a ceiling on the rate of return that the private party can earn in a PPP transaction?

There are no statutory criteria or limitations on the rate of return that the private party may earn.

The financial proposal of the private party, including its financial model, is analyzed and authorized by the public-sector party as part of the PPP approval process (or based on negotiation between the parties).

This also needs to get the go-ahead from the Ministry of Finance and the PPP Approval Committee.

TRANSFER OF OWNERSHIP IS RESTRICTED.

Is it against the law to give someone else a stake in the project firm or another person's work, either directly or indirectly?

Typically, this is governed by the PPP agreement. Usually, the public-sector participant must agree to the transfer before it can happen, or it must happen after a set period of time in the agreement.

THE PROCUREMENT PROCEDURE

Procedure that is relevant

What procedures are typically followed when a PPP is procured? What criteria are utilized to determine the award of a PPP transaction?

Two procurement processes are specified in the policy:

a competitive procurement procedure; and

A PROPOSAL MADE WITHOUT SOLICITATION

The policy makes no specific regulations or recommendations regarding the competitive procurement procedure. However, the policy requires that the procurement techniques used must comply with the following:

It will be conducted in line with a fair, transparent, competitive, and cost-effective system;

encourage the use of indigenous content and technology transfer to the greatest extent possible; and

Make sure that PPP activities that are part of public procurement are done in accordance with the Public Procurement Act.

Unsolicited ideas are evaluated in accordance with the policy's standards. The evaluation criteria must include the following:

affordability, value for money, and substantial technological, operational, and financial capacity; and

This demonstrates prudent risk management.

However, the proposed PPP Bill has a lot of rules about how to buy things that must be followed.

CONSIDERATION OF PROPOSALS THAT DEVIATE FROM THE NORM

Is it permissible for the government to consider proposals that depart from the scope or technical quality of work specified in the procurement paperwork during the procurement process without affecting the terms applicable to other proponents? How are these deviations quantified?

As stated previously, the policy does not mandate a detailed procurement process for PPPs. The procurement process is set up in accordance with best practices in public procurement, which require the bidder to submit a conforming offer or proposal before the government can look at another proposal or offer.

PROPOSALS MADE WITHOUT SOLICITATION

Are government parties permitted to evaluate unsolicited PPP proposals? How are these assessments made?

Yes. The government may consider unsolicited offers. Unsolicited bids are reviewed on an individual basis and are limited to projects that are not on any public-sector party's project list and have not been previously considered by the public-sector party.

Unsolicited suggestions must be consistent with the national development strategy and serve the public interest, as well as the public-sector party's requirements and priorities.

All unsolicited suggestions are also subjected to a cost-benefit analysis, as well as technical, financial, and economic evaluation.

Unsolicited offers will be subject to a competitive procurement process under the proposed PPP Bill. The bill's purpose is to discourage uninvited offers.

STIPEND PROVIDED BY THE GOVERNMENT.

No, the government party doesn't pay short-listed candidates or cover some of their costs.

The government does not give stipends or cover a portion of the costs of unsuccessful short-listed proponents. If you're going to make a bid, you're going to have to pay for everything that goes into making and filing your bids.

COMMITMENTS TO FINANCE

Is it a requirement of the government party for bids to include funding pledges for the PPP transaction? If not, are there steps in place during the procurement process to make sure that the right PPP deal can be financed after it is chosen?

Although financial obligations are not required in the proposal, the private party is typically required to describe how the project will be financed in the proposal, which is reviewed as part of the proposed terms.

In most cases, a condition precedent in the project agreement requires the private party to reach financial close, and if they don't, the private party has to do some things.

LEGAL ADVICE

May the government request a legal opinion on the enforceability of the PPP agreement from its counsel? May it make assurances regarding the PPP agreement's enforceability?

Except as expressly provided in PPP agreements, the government does not request that its legal counsel (often the transaction adviser or the attorney general) provide such legal advice to the private-sector party. It's also common for the private sector party to ask for an opinion on whether the PPP agreement is legally valid in Ghana.

FOREIGN ENTITIES ARE ALSO SUBJECT TO RESTRICTIONS.

Are there any limits on foreign businesses' participation in PPP projects? Is it permissible for foreign companies to exert control over the project company?

There are no limits on foreign businesses participating in PPP projects. However, the proposed PPP Bill authorizes the Minister of Finance to enact required regulations defining the preference that may be accorded to Ghanaian enterprises as part of the country's overall local content policy.

In addition, the public-sector party may give businesses in the area a little extra help.

A foreign entity has the right to control the project firm. According to the present draft PPP Bill, the public sector party cannot own more than 15% of the special-purpose company unless prior clearance from the Minister of Finance is obtained or the project is recognized as a strategic national project.

DESIGN AND CONSTRUCTION IN GREENFIELD PUBLIC-PRIVATE PARTNERSHIPS

Contractual structure

Is it required by local legislation that a specific type of contract regulate design and construction activities? Does it compel the selection of a governing law?

Neither the policy nor the draft PPP Bill provide any specific provision for the use of a particular type of contract.

However, the draft PPP Bill provides that the form of agreement for each PPP project shall be developed by the public-sector party in collaboration with the

MoF's PID and the attorney general's office, subject to any guidelines issued by the Minister of Finance regarding the drafting of PPP agreements' terms and conditions. As well as what the PPP Bill says, these clauses should also be in PPP agreements.

Parties to a PPP agreement could choose which law will apply to them, as long as they follow these rules:

Where an agreement covers or involves the award of a right, licence, or concession enabling a private-sector party to construct all or part of any infrastructure or work or to perform services in Ghana or on behalf of a public entity, the agreement shall be regulated by Ghanaian law;

When a public-sector body, a state-owned company, or any other contracting entity wants to get something from the private sector through a PPP arrangement, Ghanaian law rules.

In the case of agreements relating to lending or financing for a PPP project, or an arrangement for financing a PPP project, the parties have complete discretion over the applicable law, dispute resolution procedure, and forum for resolving issues.

However, if the parties refuse to exercise their autonomy in accordance with the law, Ghanaian law will apply.

LIABILITY FOR DESIGN FLAWS

Is there a law in your area that makes you responsible for design mistakes, and if so, on what terms?

No provision is made for the imposition of culpability for design faults. However, project agreements typically include provisions allowing the designer or project business to be liable for design and construction faults. The project business must transfer risk to the designer, contractor, or both.

WARRANTIES

Is it required by local legislation to include particular warranties? Are implied guarantees applicable in instances when the applicable contract is silent? Is the duration of warranties required or regulated by local law?

There are no rules mandating the inclusion of specific guarantees or the term of warranties in PPP agreements. However, in most cases, the standard boilerplate warranties are supplied.

COMPENSATION FOR LATENESS

Is liquidated damages for construction delays enforceable? Is it possible that certain penalty clauses are unenforceable?

Liquidated damages are enforceable in the event of construction delays. As part of PPP agreements, standard construction contracts or their terms and conditions are part of and can be used to enforce the agreements.

DAMAGES THAT ARE NEITHER DIRECT NOR CONSEQUENTIAL.

According to local law, what restrictions do contractors have on how much they can limit or deny liability for indirect or consequential losses?

There are no limits. These are all contractual concerns that the parties must negotiate and agree upon.

NON-PAYMENT

Is it permissible for a contractor to halt performance due to nonpayment?

Yes. In compliance with the building contract's provisions, Without such a clause in the construction contract, not paying could be seen as a breach of contract, giving the contractor the right to cancel.

CLAUSES THAT APPLY

Is there any restriction on "pay if paid" or "pay when paid" clauses under local law?

No. In general, courts will treat these clauses the same as other contract terms, and they will be enforced unless there are other reasons to break the contract.

Are terms relating to "comparable project relief" enforceable under municipal law?

Clauses relating to "equivalent project relief" are comparable to the pay-if-paid clauses addressed in question 24.

EXPANSION OF THE WORK'S SCOPE

Is it possible for the government party to change the scope of work covered by the PPP deal?

Variation or revision of the project scope is permitted only with the parties' agreement and in accordance with the conditions of the executed contract.

Unless the contract's provisions expressly allow for such unilateral adjustment, the government party may be unable to use this authority.

Additionally, under the policy, any alteration or amendment to a PPP agreement may be subject to approval by the appropriate approving authorities.

AGREEMENTS ON REBALANCING

Is any party entitled under local law to have a PPP agreement "rebalanced" or terminated if it becomes unreasonably burdensome as a result of unforeseen events? Can the parties agree on this?

This is not provided for in the policy, and it is not provided for in the proposed PPP Bill. There might be a contract that says that the agreement can be changed or set aside only in certain ways.

LAWS GOVERNING LIENS

Do statutory lien rules apply to building work completed under a PPP agreement?

No.

Other relevant provisions

Are there any additional material provisions pertaining to design and construction activities that PPP agreements must include?

The draft PPP Bill and Policy do not contain specific provisions requiring PPP agreements to incorporate requirements relating to design and construction activities.

Nevertheless, either the standard provisions of construction contracts are incorporated into the PPP agreement or the design and construction contract are annexed to the PPP agreement.

OPERATION AND UPKEEP

Performance Obligations

Is it necessary to lay out each private party's responsibilities during the operation time in great detail, or can the PPP agreement set out performance standards?

The policy mandates that the public-sector body clearly define the project's purpose and output requirements.

As a result, the private sector participant's obligations must be explicitly defined in the PPP agreement.

Additionally, it is usually practiced to clearly define key performance metrics against which the private party's performance can be monitored.

AN INABILITY TO SUSTAIN

Is the private party entitled to liquidated damages or deductions from availability payments if it doesn't run and maintain the facility as agreed?

The policy and the draft PPP Bill include no provision for liquidated damages or deductions for private party failures or underperformance. Those who sign the PPP agreement have to agree to these rules.

REFURBISHMENT OF PREMISES THAT HAVE BEEN VACATED

Does it have to be done before the facilities are given back to the ruling party at the end of a term?

No, these are contractual obligations, and it is normal to require that facilities be returned or handed back to the public party in a condition that enables the public party to continue providing the services at the end of the term. Thus, if the life

cycle of the facilities would run out during the PPP term, the agreement will include a provision for replacing them with new ones.

ALLOCATION OF RISK

Delay

How are risks associated with commercial or financial closings often distributed between parties?

After closing negotiations, it is up to the public-sector party to bring the PPP agreement to a commercial close by securing the requisite government clearance.

Unless a preliminary, binding memorandum of understanding or related documentation exists, there is no possibility of a delay in obtaining commercial close for the public-sector party. However, if there is an unreasonable delay, the terms may be renegotiated.

Concerning financial closing, the private party bears the risk. If there is a delay in obtaining financial close, the private party may be given an extension in accordance with the provisions of the agreement; otherwise, the public-sector partner is often entitled to terminate the agreement.

This is only if the public-sector party can get back a certain amount or pay for a certain thing in a certain case.

The parties usually share the risks of not getting the necessary permits in a timely manner.

In practice, the private party typically bears this cost. Generally, the public-sector party is required to make its "best effort" to assist the private party.

Failure to get permission may be considered an instance of political force majeure if the private-sector party meets all permit or license requirements but the government regulatory authority refuses to give the permit.

UNAVOIDABLE CIRCUMSTANCES

How are customary allocations of force majeure and geotechnical, environmental, and weather risks made between parties? Force majeure is a general term that refers to things that happen outside of the parties' control. Is it defined in terms of specific events?

Ghanaian law recognizes the idea of force majeure, which generally refers to events beyond the parties' control. However, in the context of specific PPP agreements, force majeure is typically classified as either natural force majeure (natural circumstances beyond the parties' control) or political force majeure (acts that may be directly or indirectly attributable to the government or government entities).

The repercussions of each are dealt with differently as contractual matters that the parties negotiate and agree upon.

THIRD-PARTY LIABILITY

Risk for third-party activities is often split up between the people who sign a PPP agreement.

Third-party involvement (excluding personnel) is typically transferred to the public-sector party (or, in some cases, is viewed as a political force majeure), as it is outside the private party's control.

As previously stated with relation to risk distribution, because the government is better equipped to manage this risk, it is assigned to the governing party.

When it comes to employees, the risk is passed on to the private sector. General strikes, on the other hand, may be put under force majeure.

POLITICAL, LEGAL, AND MACROECONOMIC RISKS

Traditionally, how are political, legal, and macroeconomic risks distributed between parties? What safeguards are in place to protect the private party from discriminatory changes to the law or regulation?

Ghana's Constitution bans nationalization or expropriation unless prompt and adequate compensation is paid.

Additional protections are provided by the Ghana Investment Promotion Centre Act, which reiterates the constitutional necessity for fast and adequate compensation in the event of nationalization or expropriation.

Additionally, the private party may purchase political insurance to protect itself against such dangers.

PPP agreements also usually include clauses that allow the private sector party to pass on the risk to the public sector or renegotiate specific terms when certain market and economic events happen that hurt the private party.

ATTENUATING INCIDENTS

What circumstances entitle the private party to time extensions to fulfill its obligations?

The list of events that can result in the extension of PPP agreements is not exhaustive and varies according to the nature of the project and the cause of the delay.

Typically, the agreement allows for occurrences that constitute a default or omission on the part of the public-sector party, such as failure to grant access to land, delay in acquiring permission, and modification of the project's scope.

What circumstances give the private party the right to further compensation?

These are often linked to the events that lead to time extensions, and they include the following:

ALTERATIONS TO THE LAW;

- On a large scale, harmful government action;
- Changes in market or economic conditions; and
- public-sector party's defaults or omissions.
- Compensation

HOW ARE COMPENSATION AMOUNTS DETERMINED AND PAID?

Generally, compensation is paid pursuant to a contract. The parties agree on a formula for estimating the amount that the private party is entitled to, and it is customary to return the private party to its pre-event position.

Before the accident happens, the people who signed the agreement agree on how much money each person will get in compensation.

INSURANCE

Is it lawful or common for project agreements to include a clause specifying an insurance program? People who have to have insurance on commercially reasonable terms are at risk of not being able to get it.

PPP agreements typically require the private-sector party to obtain and maintain, at its own expense and throughout the term of the PPP agreement, an all-risk insurance policy with a reputable insurance company acceptable to the public-sector entity that covers all liabilities and activities under the PPP agreement, including professional liability and all-risk third-party liability insurance.

Insurance for construction, public buildings, cars, and other things that are mentioned in the agreement is usually required, but it's also common for it to say that there should be more insurance.

TERMINATION AND DEFAULT

Remedies

What remedies does the governing party have in the event of a private party's breach?

The public sector party's remedies for a private party's breach range from terminating the PPP agreement and implementing liquidated damages clauses or deductions to assuming control of the project or selecting a substitute private party. The scope of the remedies is determined by the PPP agreement's conditions.

TERMINATION

What grounds exist for terminating a PPP agreement?

Generally, the PPP agreement may be terminated (for a price) in the following circumstances:

- A party's failure to repair a default event;
- a prolonged force majeure event;
- a statutory change;
- policy considerations;

Significant adverse government action that has not been cured or remedied; and as a matter of convenience

IS IT POSSIBLE TO TERMINATE THE CONTRACT FOR CONVENIENCE?

Yes, if the PPP agreement requires it. It would be a breach of contract if the agreement didn't have a provision for the public party to end the contract for their own good.

IS COMPENSATION AVAILABLE IF THE PPP AGREEMENT IS TERMINATED?

As with other types of agreements, PPP agreements typically include provisions for termination compensation.

Generally, regardless of the reason for termination, particularly after the building phase, the public-sector party pays the private-sector party. Compensation, on the other hand, varies according to the reason for termination.

Generally, the amount is greater for termination for convenience and for termination due to the public-sector entity's default (to deter termination). Typically, compensation covers the overall cost of the project plus the private-sector party's profit margins.

When a private-sector party defaults, the amount of compensation is reduced (often to cover debt repayment but not equity funds spent on the project or earnings) or no payment is made. The termination fees, on the other hand, will be specified in the contract.

FINANCING.

GOVERNMENT SUPPORT

Is the government financing or guaranteeing PPP projects with debt? Under what conditions? Which government agencies are accountable?

Generally, the government does not finance PPP projects with debt. Depending on the project's requirements, the government may give payment guarantees to the private party or guarantee lender debt repayments.

Parliament has final approval authority over PPP agreements that involve payment guarantees or other loan guarantees. The Ministry of Finance is the government entity charged with issuing such guarantees.

CONTRACTUAL EXCLUSIVITY

Are lenders granted contract privity with the government party via direct agreements or other comparable mechanisms? What are the normal rights of lenders under these agreements?

Lenders have the option of entering into direct contracts with the government. The direct agreement may stipulate the lender's step-in rights or the terms under which the lender may be compensated directly by the public-sector party.

Additionally, the direct agreement may include notification requirements, such as that the lender must be notified of the private party's underperformance or default before the public-sector party can exercise its rights under the PPP agreement.

STEP-IN PRIVILEGES

Is there a mechanism in place for lenders to exercise their step-in rights or to take over the PPP project? Is it possible for lenders to establish a security interest in the PPP agreement?

Lenders have the option of stepping in and obtaining security interests in the PPP deal.

The agreement between lenders and the government makes it clear how lenders can use their "step-in rights."

CURATIVE RIGHTS

Are lenders specifically granted cure rights in addition to those given to the project company, or are they limited to the same period and conditions as the project company?

People who borrow money from lenders and governments usually make sure that they have notice and cure provisions that are longer than what the project business has been given to fix the problem.

REFINANCING

Is there any obligation that if the private party refinances the PPP project at a lower cost of capital, the savings from the refinancing be shared with the government? Are there any refinancing restrictions?

There is no necessity for a private party to share gains with a public-sector body when refinancing a project at a reduced cost. This, however, is negotiable between the parties.

Certain agreements require that such refinancing be done with the cooperation of the public-sector participant, and the agreement may provide for benefit sharing.

Alternatively, the public-sector party may be entitled to require refinancing when more favorable terms are available, in which case the advantage is shared. This is contingent upon the PPP agreement's provisions.

GOVERNING LEGISLATION AND RESOLVING CONFLICTS

Local law administration

Which critical project contracts must be governed by local law?

Contracts that are made under the proposed PPP Bill have to be regulated by Ghanaian law in the following ways:

An agreement governing the granting of rights, licenses, or concessions that allow a private-sector party to build a portion or the entirety of any infrastructure or works of any kind in Ghana or on behalf of a public institution; and

Where a public-sector body, a state-owned firm, or any other contracting entity is expected to receive outputs from the private party under the PPP arrangement, regardless of whether such outputs are specified in an off-take agreement or not,

IMMUNITY FOR THE GOVERNMENT

What privileges does the government party have under local law when it comes to PPP transactions? Which of these immunities can the government waive?

Apart from diplomatic immunity or immunity from execution with respect to diplomatic properties and missions, security and defense installations, and petroleum facilities, government or public-sector parties entering into PPP

agreements are treated similarly to private parties engaging in private commercial activities.

Agreements with public-private partnerships also usually say that the public-sector party or government agrees to give up its sovereign immunity for good and that the agreement's execution and delivery are private commercial acts of the government, even if the government doesn't like it.

ARBITRATION IS AVAILABLE.

Is arbitration available to resolve disputes between the government and the private party under the terms of the project agreement? If not, what regime is in effect?

Arbitration may be used to resolve conflicts between private parties and government entities.

The proposed PPP Bill provides that any dispute that arises between a contracting entity and a private-sector party following the conclusion of a PPP agreement shall be resolved in accordance with the dispute resolution mechanisms agreed upon by the parties in the PPP agreement or, in the absence of such an agreement, in accordance with Act No. 798 of the Alternative Dispute Resolution Act 2010 or the applicable law on alternative dispute resolution mechanisms in force in Ghana at the time.

In most cases, the parties are bound by international arbitration rules and dispute resolution mechanisms, like the London Court of International Arbitration, the International Court of Arbitration, and the United Nations Commission on International Trade Law, which deal with international trade law.

DISPUTE SETTLEMENT THROUGH ALTERNATIVE MEANS

It isn't clear if mediation or other forms of pre-dispute resolution are required before going to arbitration or another type of binding resolution.

Not at all. This provision, however, is typically contractual. In many agreements, the parties establish a reconciliation committee to attempt to resolve disagreements peacefully. If that fails, the parties may resort to arbitration.

UNIQUE PROCESSES

Is there a separate procedure for resolving technical disagreements?

This is handled as part of the arbitration process, or in other situations, the parties to the agreement provision for resolution by an expert appointed in the event of a technical dispute or by an adjudication board.

RECENT DEVELOPMENTS AND TRENDS

Ghana's tax laws contain restrictions on transfer pricing, which govern pricing for transactions that are not handled at arm's length between partners.

In a transaction between associates, the tax authority may distribute, apportion, or allocate income, deductions, credits, or personal relief between those persons to the extent necessary to reflect the chargeable income or tax payable by those persons if the transaction had been conducted at arm's length.

The Transfer Pricing Regulations 2012 (the Regulations) were developed in response to the 2010 Organisation for Economic Co-operation and Development (OECD) Guidelines on Transfer Pricing, which require the use of the "most appropriate" approach for pricing related party transactions.

Additionally, the regulations provide guidelines on the type of documentation that must be preserved in connection with such transactions. This generally conforms to OECD criteria.

The Commissioner-General of Tax has approved the following transfer pricing methods, which are similar to the OECD's rules.

- a comparable unregulated price;
- resale value;
- the price; and
- Profit sharing on transactions

Despite the foregoing, the Commissioner-General may choose another technique.

Ghana's Transfer Pricing Regulations 2012 aim to ensure that revenue created in Ghana is "safeguarded" from "erosion or profit shifting" and is taxed appropriately in Ghana.

Countries such as Ghana have taken action in response to the OECD's proposals from the base erosion and profit shifting (BEPS) project, which seeks to limit certain tax incentives.

As a result, the 2015 Budget Statement included proposals to streamline and change the way certain tax incentives are granted.

The Ghana Revenue Authority also took action in accordance with the BEPS action plan in March 2015 when it signed a Memorandum of Understanding (MoU) with the Netherlands (an OECD member).

The MoU was signed to assist in implementing the provisions of the Ghana-OECD treaty.

Additionally, Ghana and the Netherlands are revisiting their double taxation agreement in order to "incorporate anti-abuse terms that make it more difficult for multinational corporations to avoid taxes."