Infrastructure development in Ghana, the role of PPP financing

Series 1: Introduction
KPMG Ghana in collaboration with **B&P ASSOCIATES, Lawyers & Consultants**

MAY 2022

Contents

Introduction to the Series...

This series is a joint publication by KPMG and B&P ASSOCIATES that focuses on Infrastructure and financing. The series aims to provide a comprehensive assessment of Ghana’s Infrastructure financing regime within the global context to highlight the opportunities available, gaps existing and propose useful recommendations. With the aid of Case Studies, the Series will provide practical insight from the point of view of market participants.

This first edition provides a brief overview on the world of infrastructure finance. It also provides an introduction to the Public-Private Partnership scene in Ghana, touching on trends, the legal framework of PPP and how such projects represent the most viable means of bridging our current public infrastructure gap.

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Infrastructure

Infrastructure may be referred to as the structures, facilities and fundamental systems that lie in the nexus of economic development

KPMG Global Infrastructure Practice classifies infrastructure into the following categories;

Energy and Natural Resources

This classification includes

- Power generation, transmission and distribution
- Water and wastewater
- Mining
- Oil and gas extraction, storage and transportation
- Solid waste management

Digital (Telecommunication)

This classification includes

- Telecomm infrastructure
- National broadband

Transport

Infrastructure projects include

- Urban transit
- Rail
- Roads
- Airports and aviation
- Ports and logistics

Social

Infrastructure projects pertain to

- Healthcare
- Education
- Leisure
- Housing
- Urban regeneration
- Government accommodation
- Prisons
- Major Games

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The Necessity of Infrastructure Development

The role of infrastructure in economic growth and development cannot be overemphasized. Infrastructure development stimulates short term growth and creates the enabling environment for long term growth. A study by the Global Infrastructure hub revealed that the average fiscal multiplier of investment in infrastructure on economic growth is 0.8 within a year, and 1.5 within two to five years[1].

According to policy makers, infrastructure development can influence 92% of the 169 SDG targets, across all 17 Goals [2]. Therefore investment in critical infrastructure will go beyond meeting the needs of a growing and youthful Ghana's population but will also get Ghana closer to achieving the SDG goals.

What is the Gap?

There exists a huge gap in infrastructure development worldwide and government financing alone cannot provide a realistic and sustainable means of financing the infrastructure gap. The gaps below show the infrastructure investment required by 2040[3].

World

US$ 94 Trillion
Investment needed

US$ 15 Trillion
Investment gap

Africa

US$ 6.0 Trillion
Investment needed

US$ 1.7 Trillion
Investment gap

Ghana

US$ 117 Billion
Investment needed

US$ 44 Billion
Investment gap

Source: Global Infrastructure Hub, Data accessed on 28 February 2022.

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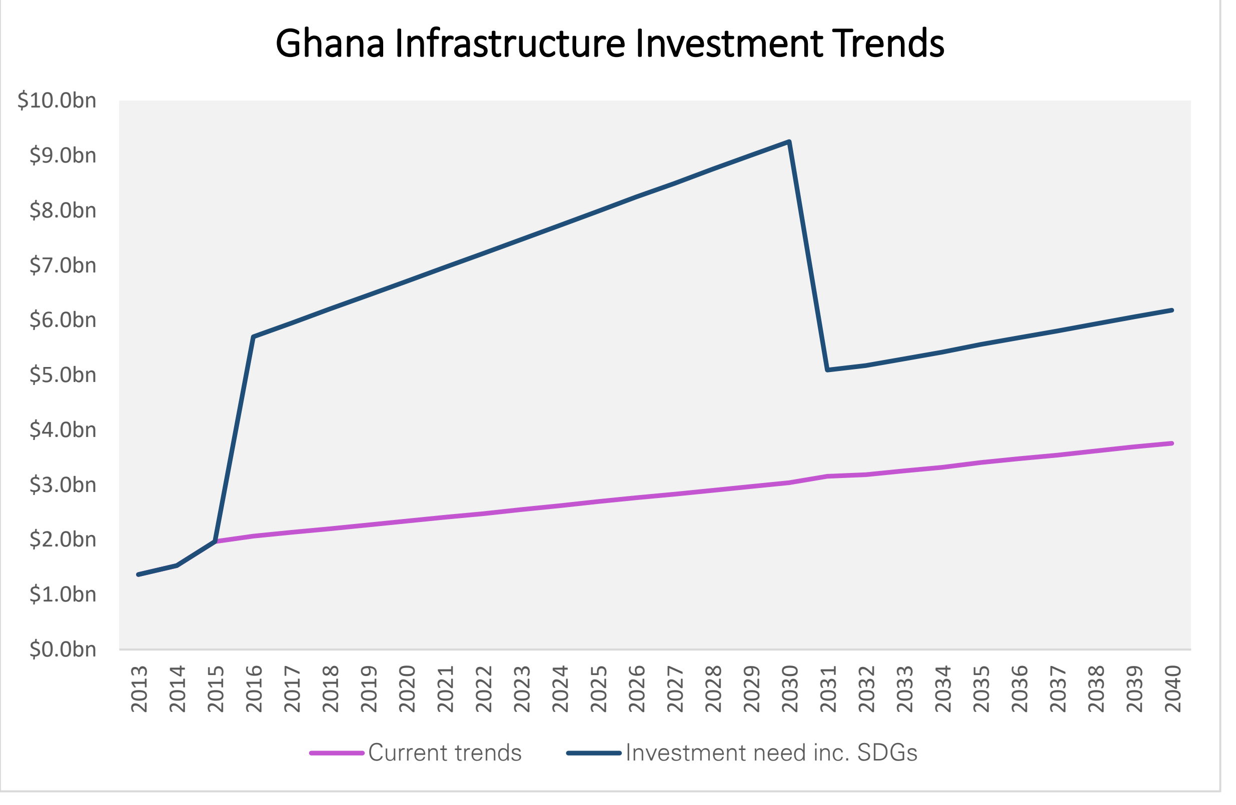
B&P ASSOCIATES

How is Ghana faring?

The Ghana Infrastructure Plan (GIP) aims to build world-class, resilient infrastructure assets by 2047 to achieve the post-2015 Sustainable Development Goals (SDGs)[2]. These require Ghana to invest close to US$9.993 billion by 2030[4].

Unfortunately, the data shows significant deficits in infrastructure investments



Source: Global Infrastructure Hub, Data assessed on 28 February 2022

How do we bridge the gap?

It is well known that public sector funding alone is not a sustainable means to bridge the country's infrastructure gap.

Governments all over the world have resorted to PPP financing as an efficient and sustainable means of addressing infrastructure gaps. PPP financing uses private funds to develop public infrastructure. PPP arrangements when properly structured, are efficient and guarantee government's control over strategic public assets.

As of 2021, the total private funds committed to infrastructure worldwide and Sub-Saharan Africa were US$2.03 trillion and US$ 92.15 billion respectively. This means Sub-Saharan Africa received just 4.5% of this big cake[5].

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Value of Private funds committed to Infrastructure development in 2021 only

Overall, a total of US$ 36.333 billion of private funds were committed to infrastructure development[6]. Interestingly, Ghana got no share of this "piece of cake".

Source: World Bank PPI database,2021

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How has Ghana's PPP Legal framework evolved to Reflect the Infrastructure Financing Scene?

Pre PPP Policy Era

Traditionally, Ghana tackled its infrastructural needs by generating funds primarily through debt and internally generated funds.

Due to the lack of sector-specific laws governing infrastructure finance and public-private partnerships, a number of laws were used in respect of these sectors. They include the Ghana Education Trust Act, 2000 (Act 581) and the Ghana Highway Authority Act, 1997 (Act 540).

Act 540 authorises the Ghana Highway Authority to negotiate concession agreements with the private sector. This created an avenue for Public-Private Partnerships (PPPs) and provided alternative means of financing infrastructure.

PPP Policy Era

In 2011, representing a giant step towards a comprehensive regulatory framework and a demonstration of the commitment of the Government of Ghana (GoG), the National Policy on Public-Private Partnerships (the "Policy") was introduced through the then Ministry of Finance and Economic Planning ("MOFEP") with support from the World Bank. PPP Policy Guidelines prepared in 2004 served as the basis for developing the more comprehensive Policy.

The Policy outlined the roles of parties in PPP Projects. The public sector, for instance, was responsible for planning and identifying public service needs, focusing on developing national and local-specific policies, and overseeing and enforcing the PPP agenda. In contrast, the private sector was responsible for delivering infrastructure facilities at the project level, primarily engaging in the design, construction, operation, management, maintenance, and financing for the PPP Project.

Therefore, private parties were primarily responsible for generating the funds required for PPP projects. This altered the focus of the source of funds, shifting the burden on public funds to private funds. GoG, however, put in place measures to support the project preparation and financing of project viability studies.

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Current Legal Regime for Infrastructure Financing- Public Private Partnership (PPP) Act, 2020, (Act 1039) Era.

Ghana's infrastructure financing opportunities have been boosted with the passage of the long awaited Public Private Partnership (PPP) Act, 2020, (Act 1039). The new law addresses different areas as it relates to the provision of infrastructure projects and services as follows:

- ✓ All PPP agreements will be governed by Ghanaian law.
- ✓ PPPs are expected to contain measures designed to safeguard the interest of the general public, interested persons and employees affected by the project, and conform to the environmental laws of the country to the highest safeguards.
- ✓ Risks associated with PPPs should in the first instance be allocated to the party best able to control and manage the risk.
- ✓ Feasibility study of the affordability of a potential partnership project based on some predetermined factors should be conducted.
- ✓ Procurement process relating to a partnership project shall be fair, transparent and competitive.
- ✓ A contracting authority should ensure that PPP projects are structured to facilitate local content, technology transfer; and the promotion of local industries and the private sector.

The arena is therefore ripe to explore PPPs as a viable option to bridge the infrastructure gap.

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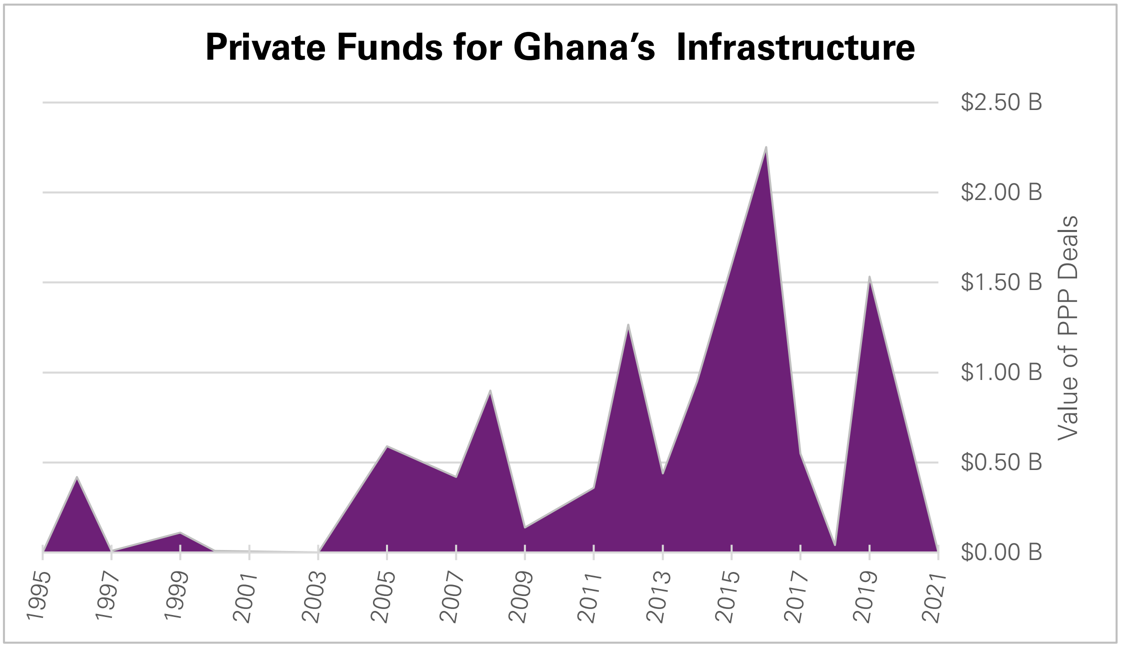
Has Ghana taken its fair share of the private funds for infrastructure "Pie"

Successive governments over the years have worked to improve the business environment and to make it fertile for foreign direct investments (FDIs) as one critical way of coopting private funds into our infrastructure development drive. These measures have yielded some results albeit not enough in addressing our needs. According to the World Bank Private Partnership in Infrastructure database, total private funds committed to infrastructure development in Ghana amounted to US$9.993 billion as of 2021 from 1995[4]. The table below shows the timelines.



Source: World Bank PPI database,2021

Unfortunately, out of the US$3.59 billion allocated to Sub-Saharan Africa in 2021, Ghana received nothing from this allocation[7]. This can neither be attributed to lack of infrastructure needs in Ghana nor COVID-19. It is a consequence of structural issues that need to be resolved.

Additionally, our predominant focus has been FDIs, but can Ghana look internally for domestic resources to finance the infrastructure gap? According to the National Pensions Regulatory Authority (NPRA) 2020 annual report, Ghana sits on private pension assets, 2nd-tier and 3rd-tier, worth GHS22.0 billion[8].

A careful structuring and leveraging of local pension assets to attract foreign funds should be implemented.

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… so what are the challenges?

Below are a few challenges associated with PPPs in Ghana:

- **Insufficient pipeline of bankable projects**

A common barrier to attracting investments in PPPs is the inability of investors to easily identify projects they can invest in[9]. One key feature of infrastructure planning and development is project pipelines. Project pipelines typically emphasise specific, upcoming investment opportunities and projects to be developed over a period of time. Currently, Ghana lacks well-prepared and investment-ready 'bankable' projects. Poorly defined infrastructure planning and inadequate linkages to relevant policy priorities is one key factor hindering PPP in Ghana. According to the World Bank, the issue of bankability of infrastructure projects has long been a topic of discussion by the development and investor communities. This has been known to be one of the major challenges to the goal of attracting private capital to meet the infrastructure gap globally thereby depriving millions of people of the key socio-economic facilities and services they need.

- **Lengthy procurement processes**

Another key challenge associated with PPP in Ghana is the lengthy procurement processes. Procurement processes tend to be cumbersome and often characterised by exorbitant bureaucratic process. For example, the procurement processes for Accra-Cape Coast-Takoradi road project started in 2014[10]. The feasibility study is currently in the process of being finalized[11]. This discourages both local and foreign investors. Public sector procurement and negotiation capabilities need to be strong, effective and transparent. Government should consider having a look at the existing procurement process to explore ways that can help make the procurement process efficient, seamless and less cumbersome.

- **Lack of appetite from investors**

In the current state of the Ghanaian economy, some economic indicators do not favour investors. One such indicator is the lack of stability in strength of the local currency (exchange rate risk). Perennial depreciation of the local currency against major currencies exposes investors to potential capital loss and by extension the expected returns of their investments. For instance as at October 2021,the interbank market saw the Cedi depreciate by 2.38 percent, and 2.57 percent, against the Dollar and Pound, respectively[12]. It therefore goes without saying that investors are more prone to invest in countries with a more stable fiscal environment hence the need for the Government of Ghana to aim at attaining macroeconomic stability.

- **Politicization and Continuity of Projects**

Politicization and continuity of projects is also a major challenge for PPPs in Ghana[13]. Over the years, successive governments have abandoned and refused to continue projects started by their predecessors with the untenable excuse of building their own political goodwill. The development recommendations proposed by the National Development Planning Commission (NDPC) and other relevant state institutions are sometimes side-lined at the behest of the government of the day.

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... so what are the challenges?

Below are a few challenges associated with PPPs in Ghana:

- **Capacity from both public and private sectors in Ghana**

The complexity of PPPs requires core competencies and capacities in the areas of skills, institutional structures and legal framework amongst others. The existing capacity to deal with PPPs is inadequate and therefore, there is a need for major capacity building programmes in all areas of PPP designs and implementation in both the private and public sector.

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Recommendations

Ghana faces a huge gap in infrastructure financing, and it is estimated that the country will require annual investment of over US$7.0 billion[14] over the next ten years. Concrete and actionable solutions are required to address the challenges discussed above. Five critical solutions are proposed below to help address the challenges and bridge the gap.

- **Establish a project preparatory fund (PPF)**

A critical challenge for infrastructure projects is the lack of properly packaged and bankable projects for private funding and development finance. Setting up of a PPF to support the preparation of projects including the conceptualization and design of projects, carrying out of pre-feasibility studies, detailed feasibility (financial and technical feasibility studies), business plans and investment memorandum. The Country Financing Roadmap[9], Ghana published by the World Economic Forum in June 2021 supports the setting up of a dedicated project preparation facility to ensure a steady pipeline of well-prepared, commercially attractive projects that consider all relevant market- and project-specific risk elements, and devise appropriate mitigation measures.

The PPP Act makes provision for the establishment of a Project Development Facility, which shall be a revolving fund. It is proposed that the PPF or facility is properly established to take equity stake in viable projects or be repaid the cost of the project preparation once the project reaches financial close. This will make Ghana infrastructure investment ready for private funds.

- **Empower metropolitan assemblies to prepare projects for the capital market**

Municipal bonds have been in existence since the 19th century and these are debt securities issued by municipal authorities to finance basic infrastructure projects. In the US for example, overall market size has increased since 2010, with about $3.7 trillion in municipal bond holdings in 2010 and about $4.2 trillion as of the end of September 2020, a growth of about 10% over the decade[15]. The local assemblies originate a number of projects through the process outlined in the Public Private Partnership Policy and the Public Private Partnership Act 2020, Act 1039. Ghana can develop the municipal bonds market to create an ecosystem where the metropolitan assemblies like the Accra Metropolitan Assembly (AMA) and Kumasi Metropolitan Assembly (KMA) can issue municipal bonds and encourage indigenes in the diaspora to patronize them for development. Where possible, the securities could be guaranteed by the central government or the repayments could be tied to streams of income from revenues such as property rates.

- **Build the capacity of critical institutions for project origination**

There is the need to build the capacity of various ministries, departments, and agencies (MDAs) in originating, packaging and presenting projects for approval. There is the need to ensure the MDAs have the necessary technical expertise to conceptualise, evaluate and propose viable projects to go through the PPP cycle. This will ensure that limited time and effort is spent by the PPP unit at the Ministry of Finance and the appointed transaction advisor in packaging the project for financing. Specific areas of training include project conceptualization, project impact analysis, preliminary financial impact and modelling, and appropriate financing structures for the proposed project.

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Recommendations

- **Shorten project procurement process**

Project procurement process in Ghana appears to be lengthy and private sector participants believe that this situation increases the amount of time spent in preparing the project for financial close. This has the potential to increase the cost of the project as a lot of time is spent on project preparation. Even though the National Policy on Public Private Partnership[16] outlines the timelines for all the stages of the procurement, experiences with certain road projects provide evidence that projects can go through the procurement process for years. The local assemblies can be encouraged to package projects within their approval threshold so it can be fast-tracked for funding.

- **Ensure general macroeconomic stability and policy certainty**

Some of the key risks that were identified by the private sector include exchange rate risk and general uncertainty regarding policy direction regarding some projects. The domestic currency has seen fluctuations in its value relative to international currencies. This presents a real risk to investors who want to ensure that their investments are secured in real terms. Investors prefer a stable environment where movements in the currency can be predictable especially where the inflows are denominated in the local currency.

Additionally, the possibility of signed contracts being renegotiated or even being cancelled also presents a risk to investors. The recent case of certain power purchase agreements being reviewed posed a threat to investors.

In conclusion

Ghana has shown steady progression from the era where infrastructure finance was the sole responsibility of the Government to the current era of innovative methods of sharing this burden with private parties in line with international best practices. The passage of the PPP Act heralds a new dawn for Infrastructure Finance in Ghana. The Act has provided the necessary framework for a symbiotic relationship between Government and Private Parties in delivering quality public sector infrastructure.

The new PPP law has generated excitement within the investment community. It is reported that many have already expressed interest in partnering with GoG to design, construct and finance a broad spectrum of infrastructure projects due to the security and transparency the PPP Act promises. This is certainly good news. However the success of this new way of structuring infrastructure finance and the new PPP regime as a whole, will depend to a large extent, on the improvement of the local technical capacity to meet the demand and to ensure that all stakeholders reap the benefits of this new era.

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KPMG Case 1

Case study: LOT 3 Annuity Road Project

The LOT 3 annuity road is a project that beats the odds. It is typical that PPP projects, particularly for roads, tend to be for heavily plowed roads. However, in this case, the road was not commercially viable as it connects a remote and marginalised region in Kenya to the wider road network.

About the project

The Kenya Road Annuity project by Kenya National Highways Authority (KeNHA) is part of the LOT 3 annuity road project in Kenya in line with the Public Private Partnership (PPP) Act. The SPV structure has a 60% Chinese SOE ownership and 40% local partnership This PPP arrangement is designed as build, finance, operation and maintain of a two- year construction period followed by eight-year operations phase for project cost of USD140 million.

The project will be refinanced through a national fuel levy assigned.

The project spans across 140km in distance. It entails the construction of the 68 km class A road from Modogashe town through Habasweini town to Samatar and the 75km Mandera-Rhamu road.

How KPMG assisted

KPMG Africa Infrastructure Practice in collaboration with key stakeholders have strategized and planned the limited budget to leverage and finance this critical infrastructure. This included a hybrid funding option of both foreign and local investment. Also, there is a rare shift of engaging an EPC firm as an investor of this project. This is one of the largest Chinese state identities which has never done a PPP in Africa and runs a road infrastructure portfolio of USD150 billion.

The project intends to yield several societal benefits which include connecting a remote, marginalised region in the north-east of Kenya to the wider road network. The journey time is expected to be reduced from two days – approximately 48 hours - to eight hours, jobs creation through construction for local workers as well as increased economic growth. To provide linkage of Garissa to Isiolo Wajir and also connect with Mandera County which serves as a gateway to Ethiopia. This stands to improve the transport network and growth of businesses in North-Eastern and trans-border commerce.

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Case study: Mixed Use Waterfront Community Development

The mixed-use waterfront community development project is set to primarily enhance national social-economic development and to create a model public-private partnership.

About the project

The Mixed-Use Waterfront Community Development is spearheaded by a Ghanaian Engineering Company. This project is a PPP between the Government of Ghana and a Ghanaian engineering company to develop a mixed-use waterfront community to primarily enhance national social-economic development in Ghana.

The Ghanaian Company is responsible for the development and financing of the Project while the Government of Ghana would provide a minimum of 50-acre parcel of land for the construction of the Project under the Joint Venture Agreement.

How B&P assisted

B&P ASSOCIATES acted as the legal representatives of the Ghanaian Company for the transaction. The Firm prepared the Joint Venture Agreement (JVA) between the Company and the government and advised on the relevant regulatory compliance requirement regarding the project.

B&P ASSOCIATES also advised the Company on the most adequate corporate governance structure and shareholding structure in compliance with the Companies Act 2019 (Act 992). We further advised on Easement/Reclamation rights and possible compensation claims.

This PPP project is set to be at par with international standards and will be of immense benefit to the public.

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KPMG Corporate Profile

KPMG Corporate Profile

Our Global Footprint

Globally connected, locally relevant

For almost 100 years, KPMG has provided very high calibre professional services to its clients. Today, having successfully grown to be one of the largest professional services organisations in the world, KPMG is acknowledged as a leader in all forms of audit, tax, and advisory services with a global approach to services that spans industry sectors and national boundaries. Global capability and consistency are central to the way we work.

By providing global organisations with the same quality of service and behaviour around the world, we can work with them wherever they choose to operate. Our industry focus helps KPMG people to develop a rich understanding of clients’ businesses and the insight, skills, and resources required to address industry-specific issues and opportunities.

KPMG facts and figures…

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- **19%** of Fortune Global 500 companies.
- **21%** of Forbes Global 2000 companies

KPMG has some **11,455 partners** and **224,802 staff** serving over **180,000 clients**.

Worldwide fee income of **US$32.13 billion** in 2021.

KPMG has a **large client base** representing commercial, financial and government interests in virtually **every sector** of the global economy.

What set us apart…

Our business model enables deep industry experts to work side by side with business leaders to develop and deliver solutions using highly specialised teams tailored to the specific business needs of clients.

We have many strategic alliances including technical advisors/consultants that further broaden our capability set and help us bring targeted solutions to clients.

KPMG

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KPMG Corporate Profile

Our Africa Footprint

KPMG is well represented across the African continent. Our objectives are to provide consistent, high-quality services to multi-national, regional and local clients and to enhance the product offering in certain previously under-serviced markets.

Our extensive network of practices enables KPMG to ensure that our clients have access to a blend of professionals who are well versed with local conditions, giving them access to skilled resources, no matter where they are in Africa

Offices servicing other countries

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São Tomé and Principe

Cameroon covers
Central African Republic, Chad

Egypt covers
Sudan

Ghana covers
Liberia, Gambia, Sierra Leonne

Ivory Coast covers
Burkina Faso, Equatorial Guinea, Guinea, Niger

Mauritius covers
Comoros, Madagascar, Seychelles

Kenya covers
Burundi, Eritrea, Ethiopia, Somalia, South Sudan

Senegal covers
Cape Verde, Guinea-Bissau, Mauritania

South Africa covers
Lesotho

Our 'African Footprint' enables all African offices to work effectively and efficiently across the continent. Through a compelling vision, outstanding teamwork and sustained relevant investment over several years, KPMG is bringing together our African practices for the benefit of our clients and growth of our people.

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KPMG Corporate Profile

KPMG in Ghana

KPMG in Ghana is a partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International. It and has been operating in Ghana since 1920's, providing multidisciplinary professional services to both local and international organisations within the Ghanaian business community.

Originally set up as Cassleton Elliott & Co, it later evolved to become Peat Marwick Cassleton Elliott and Co. Later, it operated under the name Peat Marwick Okoh & Co. until 1 January 1996, when the name changed to KPMG in line with a decision of the international council of KPMG to have all affiliate firms adopt that name.

Our vision is to build and sustain our reputation as the best firm to work with by ensuring that our people, our clients and our communities achieve their full potential. With passion and purpose we work shoulder to shoulder with our clients, integrating innovative approaches and deep expertise to deliver real results.

The Services we offer

Audit

- Financial Statement Audit
- Statutory Audit
- Internal Audit
- Audit Related Services

Tax

- International Corporate Tax
- Business Tax
- Indirect Tax
- Personal Tax
- Global Mobility Service

Advisory

Management Consulting

- Strategy and Operations
- Financial Management
- People and Change
- IT Advisory in Management Consulting
- Business Intelligence and Analytics
- Shared Services and Outsourced Advisory
- Transformational Programme Management

Risk Consulting

- Financial Risk Management
- Accounting Advisory Services
- Internal Audit and Risk Compliance
- IT Advisory in Risk Consulting
- Forensic

Deal Advisory

- Transaction Services
- Restructuring
- Corporate Finance
- Public Private Partnerships

Our Lines of Business

Financial Services

- Banking
- Insurance
- Capital Markets
- Asset Management

Telecommunications, Media &Technology

- Communications
- Electronics
- Media
- Software and Business Services

Consumer, Industrial Markets

- Chemicals and Pharmaceuticals
- Retail
- Food and Drink
- Consumer Products

Energy and Natural Resources

- Power and Utilities
- Mining
- Oil and Gas

Infrastructure, Government and Healthcare

- Government
- Healthcare
- Transport
- Building, Construction and Real Estate
- Funding Agencies

Our Clients

Global, National and Middle Market entities

Snapshot of KPMG in Ghana

- 12 Partners
- Over 400 staff members

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B&P Associates Corporate Profile

B&P Associates Corporate Profile

CUTTING-EDGE LEGAL & CONSULTANCY SERVICES

B&P ASSOCIATES ranked by 2021 Legal 500 Europe, Middle East & Africa (EMEA) as a Leading Law Firm.

We are a commercial law firm and consultancy located in the heart of Accra, Ghana. Our interest is to keenly promote the ease of doing business in Ghana and for this reason provide top-notch user-friendly legal advice to domestic and international investors. We are in tune with the international, local and commercial environment and well-positioned to assist our clients in anticipating and achieving their business objectives.

We have an adaptable and approachable team that provides excellent client care. Our team of lawyers are experienced in providing legal advisory services, navigating corporate and commercial transactions, performing regulatory compliance as well as providing training and consultancy for international organisations on the Ghanaian investment scheme. As a team of multilingual, internationally licensed lawyers, we pride ourselves in providing simple and practical solutions to complex legal challenges.

Expertise

- Mergers & Acquisition
- Corporate & Commercial
- Project & Project Finance
- Real Estate & Construction
- Restructuring & Insolvency
- Employment & Immigration
- Family, Trust & Probate
- Natural Resources & Renewable Energy
- Dispute resolution & Debt Recovery
- Technology, IP & Telecommunications

Services

- Transaction Advisory
- Investment Advisory
- Representation in Courts & Tribunals
- Business Support & Notaries Services
- Company Secretarial Services
- Business registration, Set up & Operations
- Due diligence & Investigations
- Corporate Training

Visit our website www.bpaghana.com for our Knowledge & Insight section which is dedicated to Regulatory Guides, Blogs, Newsletters, Judicial Insights, and Firm News.

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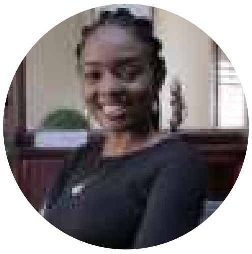

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B&P ASSOCIATES is a law firm authorized and regulated by the General Legal Council of Ghana. We are an unlimited liability partnership incorporated in the Republic of Ghana.

The B&P ASSOCIATES team has lawyers who are multi-lingual and licensed to practice in Ghana, England and Wales, New York and Nigeria. Our knowledge across different sectors and jurisdictions allow us to advise with a high level of insight that meet our clients' business needs.

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