REPUBLIC OF GHANA

## Ministry of Finance and Economic Planning

# PUBLIC BORROWING AND PROJECT SELECTION GUIDELINES

**For**

## Promotion of Responsible Borrowing and Lending Practices

**November, 2010**

## Abbreviations

| | | |
|---|---|---|
| ABP | - | Annual Borrowing Plan |
| ADF | - | African Development Fund |
| ADF | - | African Development Fund |
| ADMD | - | Aid and Debt Management Division |
| AG | - | Attorney General |
| BCF | - | Buyers Credit |
| BOG | - | Bank of Ghana |
| CAGD | - | Controller and Accountant General Division |
| CGB | - | Central Government |
| COMM | - | Commercial Sources |
| DMD | - | Debt Management Division |
| DSA | - | Debt Sustainability Analysis |
| ECA | - | Export Credit Agency |
| ECG | - | Export Credit Guarantee |
| ECGA | - | Exim Bank Export Credit and Guarantee Agency |
| ERM | - | External Resource Mobilization |
| ERR | - | Economic Rate of Return |
| GFSM | - | Government Finance Statistics Manual |
| GPBG | - | Ghana Public Borrowing Guidelines |
| GS | - | Government Securities |
| ICB | - | International Competitive Bidding |
| ICM | - | International Capital Market |
| IMF | - | International Monetary Fund |
| IPO | - | Initial Public Officer |
| IPP | - | Independent Power Producers |
| LC | - | Letter of Credit |
| LOI | - | Letter of Intent |
| MDA | - | Ministry , Departments and Agencies |
| MIL | - | Multilateral |
| MILN | - | Multilateral Non-Concessional |
| MOFEP | - | Ministry of Finance and Economic Planning |
| MOU | - | Memorandum of Understanding |
| MTDS | - | Medium Term Debt Strategy |
| MTN | - | Medium Term Notes |
| NDF | - | Net Domestic Financing |
| OECD | - | Organization for Economic Cooperation and Development |
| OFID | - | OPEC Fund for Investment and Development |
| OLN | - | On-lent |
| OPEC | - | Organization of Petroleum Exporting Countries |
| PFA | - | Project Financial Analysis |
| PID | - | Public Investment Division |
| PPC | - | Private Sector Consent |
| PPG | - | Parastatal of Private Government |

| | | |
|---|---|---|
| PPP | - | Public Private Partnership |
| PRIV | - | Private Sources |
| PRIVC | - | Private Sources Concessional |
| PRIVCN | - | Private Sources Non Concessional |
| PSBR | - | Pubic Sector Borrowing Requirements |
| PSG | - | Public Sector Guarantee |
| PSG | - | Private Sector Guarantee |
| SCF | - | Suppliers Credit |
| SPC | - | Special Purpose Company |
| SSNIT | - | Social Security and National Insurance Trust |
| TMC | - | Treasury Management Committee |
| UN | - | United Nations |
| VFM | - | Value for Money |
| WB | - | World Bank |

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# 1.0 Introduction

Public borrowing in Ghana dates back to the early post colonial era. A remarkable case of early borrowing in Ghana was when the first President of the Republic of Ghana, H.E. Osagyefo Dr. Kwame Nkrumah went out to source funding for the construction of the Akosombo Hydroelectric dam in the early 1960s. During the early stages of post independence Ghana, the economy operated a pretty balanced budget. Public borrowings were therefore mainly project linked/tied.

Currently, the purposes of borrowing have evolved tremendously, to include project finance, (investment), budgetary support/program loans, guaranteeing or onlending for the SOEs or private sector and other varied purposes.

The main sources of external sovereign borrowing were from the bilateral and multilateral sources. Over the years, the sources of borrowing available to Ghana has been diversified, ranging from the traditional bilateral and multilateral, to commercial banks, international capital markets, domestic government security/bond market and other structured financing from private firms and syndicated sources. The types of facilities has also seen enormous financial architectural reform, from a simply government to government loan to sophisticated financial engineering including, complex receivable backed financing, financial leasing, onlending schemes and derivative transactions.

The vast revolution in the financial landscape in Ghana has come with many complexities. This therefore requires more attention and well coordinated effort to harness the contemporary financing/borrowing challenges.

Recently, public borrowing/guaranteeing has been conceptualized and carried out in a manner to mimic a laid down procedure, but not well documented. This procedure has been guided by the legal provisions as in legal framework in Section Two of this document. Until recently, public borrowing has been concentrated in few departments and there were no clear procedure or guidelines. Though the 1992 Constitution of the Republic of Ghana and the Loans Act of 1970 (ACT 335), clearly stipulates that the Minister of Finance and Economic Planning is mandated to borrow on behalf of the Republic of Ghana, there were no clear procedural approach. Additionally, due to the lack of clarity in the procedures, there have been instances where the documentations prepared to seek the regulatory approvals, including the cabinet and parliamentary were either incomplete and/or not properly reviewed.

It is therefore not a gainsay to state that in view of the sophisticated global financial revolution, coupled with the international call for concerted effort to promote responsible lending and borrowing practices, it is of utmost importance to design a well coordinated public borrowing guidelines.

**Ghana's Public Borrowing Guidelines (GPBG)** is therefore designed to ensure that Ghana records high decency in conducting Public Borrowing/guaranteeing and lending practices. **Section One** of the GPBG will introduce the document and **Section Two** will focus on the legal framework guiding public borrowing/guarantee. The sources of public borrowing, classification of borrowers/guarantors, types of facility and guarantee and borrowing/guarantee limits will be discussed in **Section Three.** Section Four will also look at the institutional arrangement in the borrowing processes. The detailed steps for borrowing/guarantee procedures are also outlined in **Section Five** and conclusion in **Section Six.**

It is recommended or intended that the GPBG will be reviewed bi-annually to incorporate and/or address new findings/challenges in the public Borrowing/guarantee arrangements.

The **Risk Management and Policy Analysis Unit of the Debt Management Division** of the MOFEP designed the GPBG with valuable inputs from the IMF and some of the sector ministries in Ghana.

## 2.0 Legal Framework

The Public Borrowing Guidelines has been outlined in accordance with Articles 181 and 182 of the 1992 Constitution of the Republic of Ghana, the provisions in the Loans ACT of 1970, **(ACT 335)**, Procurement ACT of 2003 **(ACT 665)**, the Financial Administration ACT of 2003, **(ACT 654)** and Financial Administration Regulation 2004, **(LI 1802)** in order to legitimise all borrowing, ensure prudence and better coordination in contracting public loan.

The Procedure also takes into consideration other existing assumed procedures and policies and international best practices to ensure harmony in arranging Public borrowing and public project execution.

## 3.0 Borrowing, Guarantees and Limits

This section looks at the various existing and potential sources of borrowing available to the Country. The section also explains Borrower/Guarantor types of borrowing. The Sources and borrower/Guarantor types have been symbolised for ease of reference in subsequent **sections** below.

### 3.1 Sources of Borrowing

The sources of borrowing have been categorised into two main; External and Domestic.

#### 3.1.1 External Borrowing

External borrowing can be explained by the definition of external debt. According to the Government Finance Statistics Manual 1986 (GFSM 1986) and Definition, Statistical Coverage and Methodology (BIS, OECD, IMF and World Bank), external debt is defined on gross basis at any given point in time as disbursed and contractual liabilities of the central government to non-residents to repay principal, with or without interest, or to pay interest, with or without principal. Basically, external debt is therefore the amount owed to **creditors/lenders** which are non-resident of the country. External borrowing sources are further segmented into four categories as; Multilateral, Bilateral, Commercial and Private. However, the segmentation are not watertight, there are possibilities of hybrid or mix sources for one transaction.

**i. Multilateral Sources (MIL)**

These are sources of borrowing obtained from international organisations or grouping. It could be a worldwide member countries organisation like the World Bank (WB), Regional Organisation like the African Development Fund (ADF), or the economic grouping organisation like the OPEC Fund for International Development (OFID) Fund and religious/sectional organisation like the Islamic Development Fund. The MIL is further categorised into Multilateral Non-concessional **(MILN)**, e.g. IBRD, ADB and Multilateral Concessional **(MILC)**, IDA, ADF.

**ii. Bilateral Sources (BIL)**

These are sources of borrowing between the Republic of Ghana and other recognised sovereign nations. For example, a credit transaction between the Republic of Ghana and the Republic of Korea, represented by the appropriate institutions. This BIL is further categorised into Bilateral Non-concessional **(BILN)** e.g. the Export Credit Agencies and Bilateral Concessional **(BILC)** e.g. the soft loans (usually Government to Government).

This source is normally used **to promote bilateral relationships and has relatively low risks**, however, the main risk is that it is **inadequate and unpredictable**.

**iii. Commercial Sources (COMM)**

These sources relates to the borrowing from the international commercial banks, the international capital markets and other potential sources such as the Mutual funds, Pension Funds, recognised stock markets and other specialised funds.

This source of borrowing has been very marginal in the public debt portfolio, until the 2007 Ghana's maiden Eurobond Issue. The source is **reliable in terms of quantum of financing and predictability** but has **high market risks**.

**iv. Private Sources (PRIV)**

These are sources derived from international private individuals or organisations. This source could be concessional **(PRIVC)** or non-concessional **(PRIVN)**.

### 3.1.2 Domestic Borrowing

In Ghana, domestic borrowing is fast growing and gaining more momentum, not only due to expansion in coverage but also the diversification of sources and types. In view of the market size and the types of facilities involved in domestic borrowing, such as the domestic suppliers, there is **no minimum limit set** for domestic borrowing. However, there will be flexibility for reclassification and merging of transaction for the purposes of simplifying data management.

**i. Government Securities (GS)**

These are the Government borrowing through the issuance of Treasury bills and Notes/ bonds on the domestic market, usually by the Bank of Ghana, as Agent. This source also includes other non-marketable instruments or government deficits securitised into long term bonds and stocks.

**ii. Commercial Banks and Non-Banks (DSL)**

These are term loans borrowed from the domestic banking sector or the non-banking sector, including SSNIT (Pension Fund loan).

**iii. Domestic Supplier's Credit**

These include pre-finance contracts undertaken by domestic contractors or suppliers.

## 3.2 Classification of Borrower/Guarantor

This discusses the main borrower and guarantor types;

**i. Central Government**

a) Any borrowing (new, enhancement, addendum) by central Government **(CGB)**, represented by the MOFEP
b) Any Government borrowing intended to be on-lent to any Parastatal **(OLN)**
c) Public-Private Partnership **(PPP)** arrangement. (Risk sharing arrangement)

**ii. Publicly Guaranteed (Contingent Liabilities)**

a) Parastatal borrowing which requires Government Guarantee **(GGP)**

b) Private Sector borrowing which requires Government Guarantee **(PSG)**
c) Parastatal or Private borrowing which requires Government consent **(PPG)**

## 3.3 Borrowing and Guarantee Limits

This sections discusses the main limits on borrowing and guarantees in Ghana

### 3.3.1 Minimum Single External Borrowing Amount

For purposes of management and administrative cumbersomeness, the minimum single borrowing from external sources is set at **Fifteen million United States Dollars (US$15,000,000.00)** or its equivalent in other foreign currencies.

### 3.3.2 Maximum External Borrowing Per Annum

The maximum external borrowing limits per annum will be guided by the borrowing amounts recommended under the latest Debt Sustainability Analysis Report. This will also be informed by the current Annual Borrowing Plan (ABP) and/or Medium Terms Debt Strategy (MTDS). Further, any sectorial or institutional borrowing or guarantee ceiling in the DSA and MTDS will be applied.

### 3.3.3 Maximum Domestic Borrowing Per Annum

The maximum domestic borrowing limits per annum will be guided by the **Net Domestic Financing (NDF) target** set by the Government of the Republic of Ghana and/or in agreement with its Development Partners. This is mainly restricted to borrowing under Government securities and not domestic term loans. However, the overall maximum borrowing limit under domestic debt will be guided by the DSA and the MTDS plan.

### 3.3.4 Maximum Guarantee and Onlending Per Annum

The maximum guarantee or onlending that could be extended to any Parastatal/SOE on annual basis/period will be guided by the performance of the SOE. The maximum annual limit for an **SOE will not exceed the sum of three year backward looking revenue generated** by the SOE. For a new company/private sector firm or SOE, which has no three year backward looking reference, the forecasted cash flow will be used when the company is producing at full capacity. This provision will also be subjected to the conditions for issuing guarantee for the SOE or the private company.

### 3.3.5 Conditions for issuing Guarantees and Granting Onlending Facilities

The issuance of guarantees by the MOFEP on behalf of the Republic of Ghana to SOEs and Private sector will be conditioned upon satisfying the following criteria;

i. **Guarantee/Onlending for SOEs**

a) Must satisfy the necessary conditions of the **Preparatory to Approval stages** of the public borrowing guidelines.

b) The PFA shall conduct project viability analysis and inform ADMD of its findings for the appropriate actions on the project.

ii. **Guarantee/Onlending for Private Sector**

a) Must satisfy the necessary conditions of the **Preparatory to Approval stages** of the public borrowing guidelines.

b) The PFA shall conduct project viability analysis and inform ADMD of its findings for the appropriate actions on the project

c) Guaranteeing or onlending for the private sector must be economically viable and/or of strategic importance to the nation, which must be determined by Cabinet in collaboration with the Public Investment Division of the MOFEP.

### 3.4 Types of Facility

There are different types of facilities being accessed by Ghana and other potential ones to explore. These include but not limited to the following;

i. **Direct Terms Loans**

A loan with a maturity period either short or long and is governed by agreement. The loan may bear fixed or floating interest rate and require a specified repayment schedule. The term loan could be for a Bridged financing, Revolving Credit, Multiplier loan (US Exim Bank) and others.

ii. **Buyers' Credit (BCF)**

A financial arrangement by which a bank, financial institution or export credit agency in the country of the exporter extends a loan, either directly to the foreign buyer of the exported goods, or indirectly through a bank in the buyer's country acting on his behalf. The credit is thus meant to enable the buyer/importer make payments due to the supplier/exporter under the contract. It is typically a medium-to long-term loan. Also, the lender requires the Borrower/Buyer to pay some portion of the Contract (usually 15%) and provides the 85% as Buyer's Credit. This operates just like the supplier's credit.

Due to risk considerations, the bank or lender or Guarantor may require the Borrower to pay insurance or Exposure fees.

iii. **Suppliers' Credit (SCF)**

This is a financing arrangement under which an exporter extends credit to a foreign importer to finance his purchase. Usually the importer pays a portion of the contract value in cash and issues a Promissory note or accepts a draft as evidence of his obligation to pay the balance over a period of time. The exporter thus accepts a deferred payment from the importer, and may be able to obtain cash payment by discounting or selling the draft or promissory notes created with his bank.

Under Supplier's Credit, the Supplier/Exporter extends the loan directly to his buyer/importer. The Supplier may obtain the financing amount from his own resources or borrow from his bankers or lender. In this arrangement, the buyer has no credit relationship with the Supplier's bank or lender. However, for the purposes of due diligence or transparency, the Supplier may introduce or inform the buyer of his lenders, but not necessarily the terms of financing between the supplier and his lender. Normally, in this arrangement, the supplier requires the borrower/buyer to pay risk mitigation or insurance premium. (Usually, when the financing is from supplier's own resources, they resort to insurance instead of export Credit guarantee)[1].

**iv. Export-Import Guarantee Agencies (Exim-Banks, Export Credit and Guarantee Agencies-(ECGA))**

These are usually Government established Credit or Guarantee Agency which is aimed at promoting exports or exporters' trading with the outside world. The ECGA lubricate the buyer and suppliers Credits facilities to facilitate their exports. It blends the two trade financing structures of buyer's and supplier's credit facilities.

The ECGA in the seller/exporter country usually guarantees or provide financing to the buyer in a Buyer's Credit arrangement to enable him buy from the seller. The ECGA may also provide guarantee to the Buyer/Importer or financing to the Supplier in a supplier credit arrangement to enable the seller export or buyer import. These types of financing (Buyer's, typical supplier credit facilities) usually require matching or counterpart or Down payment. By ECA rules, the rate is normally about 15%.

Counterpart or Down payment applies when the facility requires Government or the buyer to make an upfront payment of the entire applicable rate. Matching funding applies when the government negotiates for or is required to spread payment of the applicable rate over the disbursement period or pay prorate to the disbursement of the remaining 85%.

A trade financing arrangement by which a bank or an ECA directly extends a loan to the Exporter often collateralized by the exporter's pledge of his export receivables. The bank or ECA may also purchase or discount the exporter's receivables with full, limited or no recourse against the supplier.

**v. Receivable Backed Financing**

This is a mode of financing by which government arranges an upfront receipt of funding against its receivables in future. By this structure, government obtains loan from a bank or any credible institution and earmark recicevables from government revenue sources, eg tolling, royalties receivable, other fees or sale of commodities or assets for repayment. This can be done in three main ways viz; factoring, forfeiting and through assignment of rights into a Special Purpose Company (SPC) for Initial Public Offer (IPO) of the rights or interest.

[1] Due to tax purposes the supplier may not want to open up to the Government agency for guarantee.

The collateral, security or guarantee under this arrangement lies in the reliability and predictability of the receivables. Usually the discount applied in factoring or forfeiting determines the price of upfront funding for government.

This type of financing may not require Parliamentary approval especially if matched against funding like the UN Peace Keeping Receivables, Tolling of road to be derived from the Road Fund.

**vi. International Capital Market (ICM)**

This is the floatation of bond on the international capital market to obtain funds for development or specific enhance government financing. Normally, this is an unsecured funding.

**vii. Financial Leasing**

This is a means of financing by which government obtains and makes use of assets or equipments without retaining or having ownership title. The arrangements permits that Government is able to own the asset or equipment at a later date.

**viii. Public-Private Partnership (PPP)**

This is a contemporary arrangement in project financing where the public and the private sector share risks to accomplish projects for mutual benefits.

**ix. Other Structured funding mechanism**

This includes other contemporary financing schemes outside what have been described in this section above. Such financing may include commodity and credit derivative transactions, structured private placements and Medium Term Notes (MTN) trading( trading in banking debentures) to raise funding.

### 3.5 Types of Guarantee or Securities

This section discusses the various types of guarantees that can be issued by the Republic of Ghana, viz;

**i. Sovereign Guarantee and Executive or Government Guarantee**

Sovereign guarantee is usually on request by Lenders or Creditors for any borrowing undertaken by the Republic of Ghana with approval by Parliament.

Executive or government guarantees are issued to facilities which received executive/cabinet approval but not parliamentary approval. By the constitution of Ghana, this is not appropriate and leads to “odious debt’.

**ii. Bank Guarantee (Central Bank, Commercial Bank or International Prime Bank)**

These are guarantees issued by the BOG or any commercial bank at the request of the MOFEP to a lender or creditor on behalf of the Republic of Ghana.

**iii. Promissory Notes, Standby Letter of Credit,**

These also serve as forms of guarantee which could be issued to secure any credit facility taken by government.

**iv. Escrow Account or sinking Fund for repayment**

The above is also used as a form of security in redemption of any credit facility undertaken by the Republic of Ghana or any institution in Ghana.

**v. Risk Mitigation or Insurance Premium**

These are credit risk enhancement usually requested by commercial and private lenders or creditors. This cost is treated as part of the borrowing cost to Government/borrower.

**vi. Exposure fees/Export Credit Guarantee fee**

These are similar or same as risk mitigation or insurance premium. These are usually charged under export credit facilities or buyers credits under ECA rules.

**vii. Bonds or Stocks**

These could also be used as security or collateral for public borrowing. This is issue or raised by the borrower with the undertaking to pay at maturity and it is unconditional or as may be structured or agreed upon.

## 4.0 Institutional Arrangements

This section shows the various divisions/units and ministries and the roles and responsibilities in the process of public borrowing in Ghana.

| PASE | STEPS | | ACTION REQUIRED | SOLE SOURCING | COMPETITIVE BIDDING | GOV'T SECURITIES | GOV'T GURANTEES | LEAD DEPART | OTHER MDAs |
|---|---|---|---|---|---|---|---|---|---|
| **Preparatory Conditions** | **I** | | Project Identification | Required | Required | for LT Bond for Project | Required | MDAs/SOE | NDPC/SOE's |
| | **II** | | Submit Proposal to MOFEP | Required | Required | LT Bond for Project | Required | MDAs/SOE | MDA's |
| | | **b** | Payment of processing fees | Required | May Required | | May Required | lender or agent | DMD, MOFEP, CAGD |
| | **III** | **-(i) a** | Project Selection Criteria- confirmation of step 1 | Required | Required | Required | Required | PI, PFA | MOFEP, NDPC |
| | | b | Financial Viability of Project | Required | Required | Not Required | Required | PFA | MOFEP |
| | | (ii) | Financial Evaluation | Required | Required | Not Required | Required | DMD | MOFEP |
| | | (iii) | Advice of Alternate sources of funding | Required | Required | | Required | DMD | Legal, Attorney General(AG |
| | | (iv) | Due Diligence | Required | Required | Not Required | Required | DMD | Legal, (AG), other State Security/Intelligence Div. |
| | | (v) | Compose team for ICM prospectus | Not Required | Not Required | Not Required | | DMD | MOFEP, AG, BOG, Consultants/Lead Bank |
| | | (vi) | For Competitive bidding, make advert & evaluate bids | Not Required | Required | Not Required | May Required | Sector Ministry | MOFEP, Consultants |
| | | (vii) a | For ST GS, TMC determine PSBR & Inform BOG | Not Required | Required | Required | May Required | TMC, DMD | DMD, MOFEP, BOG, CAGD |
| | | b | For LT GS for projects, all appropriate conditions in STEP III met | Not Required | Required | Required | May Required | DMD | DMD, MOFEP, BOG, CAGD |
| **Preparatory Actions** | **IV** | **- (i)** | Advice MDA of the Preparatory Evaluation to proceed or otherwise | Required | Required | Not Required | Required | DMD | MOFEP |
| | | (ii) | Sector Ministry to sign Memorandum of Understanding (MOU) to cabinet for consideration | Required | Required | May Required | Required | DMD | MOFEP |
| | | (iii) | Advice MDA to Draft JCM to cabinet for consideration | Required | Required | Required | Required | DMD | MOFEP |
| | | (iv) | Mandate a fund manager to arrange funding for the project | Not Required | Required | Not Required | May Required | DMD | MOFEP |
| | | (v) | Seek a waiver from IMF | May Required | May Required | May Required | May Required | DMD | MOFEP, IMF |
| | | (vii) | Organise road shows | Not Required | Required | May Required | May Required | DMD | MOFEP, ICM |
| | | (viii) | LT domestic Bond for project, seek approval | Not Required | Required | Required | May Required | DMD | MOFEP |
| **Approval** | **v** | | Cabinet to inform MOFEP of its approval or decision | Required | Required | Required | Required | Cabinet Secretary | MOFEP, sector Ministry |
| | **VI** | | Prepare Parliamentary memo to Parliament | Required | Required | May Required | Required | DMD | MOFEP, sector Ministry |
| | | b | Seeking PPB's approval of sole financiing | Required | May Required | Not Required | Required | PPB | MOFEP |
| | | c | Review of draft credit agreement | Required | Required | Required | Required | LAD, DMD, AG | MOFEP,MOJA |
| | | d | Submission of project document for VFM | Required | Not Required | May Required | May Required | DMD | MOFEP |
| | **VII** | | Request for Parliamentary ratification on memorandum | Required | Required | Required | Required | DMD | MOFEP |
| | **VIII** | | Clerk notify MOFEP of Parliament Decision on request | Required | Required | May Required | Required | DMD | MOFEP |
| **Signing & Execution** | **IX** | | Signing of the credit agreement | Required | Required | Required | Required | DMD | MOFEP |
| | **X** | | AG issues a legal opinion on the credit facility | Required | Required | Required | Required | AGD | MOFEP |
| | **XI** | **(i)** | Other Condition Precedent - Guarantee/PNs | Required | Required | Not Required | Required | DMD | MOFEP |
| | | (ii) | Other Conditions - | Required | Required | Not Required | Required | DMD/ERMs | MOFEP |
| | | (iii) | Down Payments | May Required | Required | Not Required | May Required | DMD, Budget | MOFEP |

## 5.0 Borrowing, Project Preparation and Approval Procedures

This section primarily focuses on the chronological processes in Public Borrowing, the Actions required at each stage, the responsibilities and/or responsible Agency, Department and/or Ministry, as mapped out in institutional arrangement in section four above.

### 5.1 The Stages in the Ghana Public Borrowing Guidelines (GPBG)

The GPBG have been categorized into three stages, namely the Preparatory Stage, the Approval Stage, and the Signing and Execution Stage. **(THE PASE)**

#### 5.1.1 The Preparatory Stage

This stage begins with the receipt or identification of project proposal by the sector ministries and ends with the preparation of memorandum to Cabinet for consideration and approval. This stage should not take more than twelve (12) weeks. The procedures at this stage are as follows.

### 5.1.1.1 Project Identification

**Step I:** The sector ministry **identifies a project/programme**, which is in line with the current or previous budgets or in line with the objectives or targets of the National Development Plan. In order words, the projects must be identified to be in line with the National Development Programme. The Responsible institution is the sector Ministry or Department or Agency and in some cases in collaboration with the National Development Planning Commission.

In the case of **SOE, any other** institutions with significant government interest or a **strategic partner from the private sector**, which requires **government guarantee or an onlending** facility from government, the institution must justify that the proposed project is in line with the institution's development goal or overall national development agenda. The Responsible institution is the Agency or SOE or private sector.

**Step II**: The sector ministry or the SOE/private sector **submits** the project proposal (which may include indicative financing terms and any documents signed with the proponent of the project) to the Ministry of Finance and Economic Planning (MOFEP) for evaluation and no objection to proceed with the proposed Financier, Supplier or Turnkey Consortium.

To check unsolicited and unscrupulous proposals/agents, financiers or their agents will have to **pay a processing fee** of **US$20,000.00,** when submitting financial proposals to the MOFEP**.** This will be **refunded** after successfully approval and execution of the credit facility. This excludes proposals from bilateral, multilateral and international capital market sources. The payment is made at the DMD and forwarded to the CAGD into the appropriate/designated government account.

Steps I and II apply to sole sourcing, competitive bidding, guaranteeing and onlending and long term project financing under Government Securities.

### 5.1.1.2 Financial Evaluation (Necessary Preparatory Conditions)

**Step III:** At the MOFEP, the following are necessarily carried out.

**i.** The Strategic Branch of the MOFEP also performs the following roles/functions;

a) **The Public Investment Division (PID)** examines the proposal and confirms that it is in line with the annual Budget provisions, conforms to the medium and long term investment strategy of the MOFEP as well as the overall National Development Plan. For the issuance of a government guarantee or onlending to SOE or private sector, the PID ensures that the project is in line with the institution's development goal which also fits into the national development plan.

b) **Project Financial Analysis Unit (PFA)** of the Strategic Branch of MoFEP undertakes Economic Rate of Returns **(ERR)** and/or cost and benefits analysis for social projects and advises **DMD** on the way forward of the project. This applies to all infrastructure projects especially those organized on PPP arrangement and those requiring further selection criterions, such as for onlending, and publicly guarantee debt. The critical stage for project selection is dependent on this analysis.

**ii.** Preliminary assessment of the loan proposal to determine the concessionality and/or recommend for appropriate or suitable terms and condition to borrow will be done by DMD. The search for suitable financing may therefore involve further negotiations of the financing terms with the proposed lender/supplier. DMD's assessment includes an impact analysis to ensure that the new loan being contracted will not endanger the overall public debt sustainability. (This includes all loans, trade credit and any other structured financing, but excludes grant). The responsible division is DMD.

**iii.** In the process of the financial evaluation, DMD may recommend/ advise alternative financing sources.

**iv.** Further, the assessment also looks at proposed lender's credibility and ability to deliver on the proposed financing. (If not a traditional Creditor/lender.- i.e. MIL or BIL ICM sources) In case of a new lender, DMD request for Due Diligence to ascertain, the existence, creditworthiness and readiness of the proposed lender to engage in such international financing. The due diligence exercise also seeks to find out the source of funds to ensure that Government does not engage in any money laundering or currency trafficking. The **Due Diligence Report** therefore enables MOFEP to make an informed decision on the way forward with the proposed lender. The same action is taken in case of guaranteeing, onlending to SOE or private sector.

**v.** For ICM borrowing, the MOFEP shall compose a team made up of Finance Branch (DMD), Legal Affairs, Strategic Branch(PID, PFA) all of the MOFEP, AG, BOG, and possibly consultant/Lead Bank to organise the Prospectus and design the road map for the issuance. The PID's role is to ensure that the targeted project is ready for implementation by the time of reaching financial close on the issuance. The TMC will be secretariat in the DMD.

**vi.** For procurement under competitive bidding, the advertisement is made and the appropriate committee evaluate the proposals in collaboration with the MOFEP (DMD, Legal and PFA) and select the best bidder.

**vii.** For borrowing under government securities,

a) Short term securities for the purposes of government liquidity management, the Treasury Management Committee (TMC)[2] derive the PSBR and inform BOG of the target two weeks ahead of auction date.

b) Long term borrowing from GS, for projects, the appropriate conditions under this STEP must be satisfied.

### 5.1.1.3 Preparatory Actions

**STEP IV:** After satisfactorily meeting (i) to (viii) of the Necessary Preparatory conditions, the following line of actions may be taken:

**i.** MOFEP informs the sector Ministry or the SOE/ private sector partner (guarantee or onlending) of satisfactory completion of the due diligence and advice to continue or resume definitive discussions on the project with the proposed lender/supplier.

**ii.** The sector Ministry or the SOE/ private sector partner may wish to sign definitive Memorandum of Understanding (MOU) with the lender/ supplier or Turnkey Consortium.

**iii.** MOFEP also advice the sector Ministry to draft a Joint Cabinet Memorandum for review and signatures to Cabinet for consideration. In case of guarantee or onlending facility for the SOE/private sector, MOFEP prepares cabinet memo and seek the necessary approvals.

**iv.** MOFEP may also mandate a fund arranger to arrange funding for the project (where required). May also issue a definitive Letter of Intent (LOI) but not a Comfort Letter or guarantee note.

**v.** MOFEP may also seek a waiver from the IMF, in case of non-concessional borrowing under a Fund programme.

**vi.** MOFEP organises road shows and other definitive actions in case of ICM borrowing.

**vii.** In the case of project to be financed by long term domestic bond, the sector ministry in collaboration with MOFEP will seek the approval from Cabinet for the project. The cabinet memorandum will indicate that the project will be financed by domestic bond and will provide the indicative tenor, but not the specific coupon or pricing.

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[2] The TMC is made up of representative's form DMD, Budget Division, Fiscal, cash management, Non-tax revenue, CAGD, and Ghana Revenue Authority. The TMC is secretariat in the DMD.

These actions end the Preparatory Stage of the GPBG.

### 5.1.1.4 Applicable Facilities and Types of Contracts

This stage applies to the following types of facilities or project execution arrangements under;

a) Turnkey Contracts for Suppliers' credit, (arranging both financing and project execution)
b) EPC contracts financed by Buyers' credits, Export Credit Facilities
c) Competitive bidding & Execution and Tendering process.
d) Public-Private Partnership (PPP), or Independent Power Producers (IPP)
e) On-lending and government guaranteed loans
f) Financing Leasing, Receivable financing and other Long term Trade Credits/Financing

### 5.1.1.5 Documentations to Cabinet

The following documents must be jointly submitted by MOFEP and the Sector Ministry to Cabinet for consideration and approval. The DMD is the responsible Division which must ensure that all conditions have been met and all relevant documents accompany the joint memorandum to cabinet.

**i.** Joint Cabinet Memorandum
**ii.** A letter from DMD, MOFEP, indicating that the relevant conditions (i) to (viii) under Necessary Preparatory Conditions have been satisfied.
**iii.** Draft loan agreement reviewed by Legal Affairs of MOFEP in collaboration with AG's office.
**iv.** Detailed project document and/or Concession Agreement in the case of a PPP.
**v.** Copies of due diligence report (usually upon request and where necessary)
**vi.** A firm indicative term sheet and prospectus in case of ICM borrowing.

## 5.2 The Approval Stage

This stage begins from obtaining the Cabinet/Executive approval and ends at the Parliamentary approval through the following processes. When both Cabinet and Parliament are in session, this stage should take a period of maximum five (5) weeks to complete.

**Step V:** Cabinet informs both MOFEP and the Sector Ministry of its approval or decision on the request submitted through the joint cabinet memorandum. Further, in accordance with Article 181 of the 1992 Constitution of the Fourth Republic of Ghana and the Loans ACT of 1970 (ACT 335), which solely mandate the Minister of Finance and Economic Planning to borrow on behalf of the Republic of Ghana, Cabinet issues approval letter authorizng the Hon. Minister of Finance and Economic Planning to seek Parliamentary approval for the financing.

The **Cabinet approval letter** must indicate the **project objectives**, the **financing terms** and the **decision of Cabinet on the matter**.

**Step VI:** After Cabinet/Executive authority to the Minister of Finance, the following procedures are carried out;

a) MOFEP in collaboration with the sector Ministry or the SOE/private sector prepare Parliamentary memorandum and **solely** submitted by the Minister of Finance and Economic Planning to parliament for consideration and approval. The DMD in collaboration with External Resource Mobilisation, the Legal Affairs Division and the sector ministry are responsible for the preparation of the Parliamentary memorandum.
b) Sector Ministry or SOE or the private sector (in case guarantee or onlending) seeks Public Procurement Board approval for sole financing in case of sole sourcing.
c) The Legal Affairs Division in collaboration with the Attorney General's Department reviews the draft credit agreement and prepare for submission to Parliament.
d) Sector Ministry also submit project documents (should include Commercial Contract, Particular conditions in case of EPC contract, Employers Requirement, detail pricing breakdown, Engineering and drawing) to MOFEP for Value for Money (VFM) audit ( in the case of sole sourcing under Public Procurement Act of 2003, ACT 663)

**Step VII:** When (a) to (d) above are obtained, the Minister of Finance and Economic Planning submit the Parliamentary memorandum requesting for Parliamentary ratification/approval for the Financing. The following documentations are therefore attached to the Parliamentary memorandum to the Clerk of parliament, which is usually required at the Finance Committee in Parliament:

### 5.2.1 Documentations to Parliament

These are the documents to be forwarded to Parliament for consideration;

**i.** Cabinet or an Executive Approval.
**ii.** Parliamentary Memorandum
**iii.** A letter from DMD, MOFEP, indicating that (i) to (viii) under Necessary Preparatory Conditions have been satisfied. (At this stage, the final grant element could be determined).
**iv.** The Credit Agreement, as reviewed by Legal Affairs of MOFEP and/or in collaboration with AG's office, reflecting the financing terms as evaluated and accepted by DMD.
**v.** A forwarding letter from the Ministry of Finance and Economic Planning to the Clerk of Parliament.
**vi.** An approval from Public Procurement Board in case sole sourcing or the tender results in case of International Competitive Bidding (ICB)
**vii.** Copies of due diligence report (only upon request and where necessary)
**viii.** Prospectus for ICM and other necessary documentation.

The DMD organises all the above **documentations**, collaborates with the **Parliamentary Liaison Officer** and **forward** to the Clerk of Parliament. The following may accompany the Hon. Minister of

Finance and Economic Planning or his representative or his/her representative to Parliament to defend of the Project/Credit.

| | | |
|---|---|---|
| MoFEP | : | DMD, Legal & (ERM, when necessary) |
| Sector Ministry | : | Minister Plus technical officers (if required) |

Note that at this stage, the VFM audit report or the results of the International Competitive Bidding (ICB) may not be ready for submission to Parliament. The detailed VFM process is attached as annex I

### 5.3 The Signing and Execution Stage

This stage begins from the Signing of Credit Agreement, Commercial Contract Agreements to the time of first disbursement/drawdown, mobilization or down payment. The process is as follows;

**Step VIII:** After, the Parliamentary approval, the Clerk notifies the Minister of Finance and Economic Planning that the terms of the credit submitted for ratification has been approved by Parliament (usually reflecting terms in Parliamentary memo). The Parliamentary approval legalises and legitimises the credit facility being sourced for and therefore, prevents the situation of “odious debt”.

The Parliamentary approval letter must contain the following;

a) The legal backing complied with, eg in accordance with article 181 of the 1992 Constitution of the Republic of Ghana.
b) The brief description of the project
c) The financing terms as approved by resolution in parliament.
d) Must indicate that any change in the financing terms and/or amount which does not make the financing better or same must be re-submitted to Parliament for consideration. (Change in the lender is only administrative and need not to be resubmitted to parliament).

**Step IX:** The Minister in charge of Finance then proceeds to sign the executable credit agreement after a final legal review of the agreement. A copy of the original signed credit agreement is kept with the DMD. Copies are also sent to the Attorney General Department, Legal Division of MOFEP, and the Auditor General and CAGD.

**Step X:** The Attorney General’s Department issues a legal opinion on the credit facility to the lender confirming that all process, legal framework and approval process have been duly followed.

**Step XI: Other Conditions Precedent to Effectiveness**

The pre-conditions to effectiveness of credit may include but not limited to the following as it varies on case by case basis;

**i.** If the terms and conditions of the facility involve the issuance or acquisition of any demand guarantee (Promissory Notes, Standby Letter of Credit/Revolving L/C) through MOFEP facilitations, DMD initiates the process.

**ii.** Other conditions including appointment of a Processing Agent, submission of eligible/authorise signatories to the disbursements etc, are coordinated by the DMD.

**iii.** Note in case of a typical Export Credit facility which requires the Borrower/Buyer/Employer to contribute by way of counterpart/matching funding or down payment (Usually 15%). The following preconditions also apply;

a) In case of **Down payment**, DMD, MOFEP request the Supplier or Contractor to submit an appropriate down payment guarantee/security (not in the case of a Turnkey Consortium since it involves 100% financing and execution) to secure the upfront payment being made by the MoFEP or on behalf of MoFEP.

b) In the case of **Counterpart funding/matching funding**, DMD or the appropriate Division submits the disbursement or payment schedule to the Director of Budget and releases are made in accordance with the schedule against submission of appropriate documents.

It must be noted that the sourcing of external loan through competitive bidding (both local and international) in accordance with the Part V of the Procurement Act of 2003, Act 663, on turn-key basis must also follow similar procedures. However, through this process, the approval from the Procurement Board for sole sourcing is not required, instead, the Competitive Bidding Report.

In line with the above, each case is handled on its own merit. Further, any addendum or enhancement and/or revision in the terms a facility must be treated in line with the provision of the constitution and the Loans Act.

## 6.0 Conclusion

The above have been construed in the face of the appropriate law and policies of the nation. It is entreated that even though it is not a law or an ACT of Parliament, responsible MDAs must ensure strict adherence to these procedures and guidelines in acquiring public debt or contract.

This will among other benefits ensure that;

a) Public borrowing is done within the rubrics of the laws and policies and avoid instance of "odious debt".
b) The process of awarding contract and funds raising or sourcing for funding for the project/contract are harmonised to avoid;

   i. Situation where project procurement is completed without funding or adequate funding or obtaining financial close; or
   ii. Situations where there is a financial close but project procurement procedures are not completed.

Cabinet is hereby entreated to consider and approve the guidelines and circulate to all MDA to ensure harmony, transparency and accountability, ownership and responsibility in the process of procuring public debt or contract.

## Appendix I

| Documents Required for a VFM Audit | | |
|---|---|---|
| | **Documents** | **Responsible Agency** |
| 1 | Letter of Request from MOFEP. | MoFEP |
| 2 | Employer's Requirements (Work) or Purchaser's Schedule of Requirements (Goods). | Sector Ministry |
| 3 | Project Proposal or Background Information Document | Sector Ministry |
| 4 | Contract Agreement with Annexes | Sector Ministry |
| 5 | General Conditions of Contract (GCC). | Sector Ministry |
| 6 | Particular Conditions (PCC). | Sector Ministry |
| 7 | Report on assessment of Contractor/Supplier by client. | Sector Ministry |
| 8 | Scope of Works. | Sector Ministry |
| 9 | Price Summary Schedule. | Contractor |
| 10 | Bill of Quantities in detail with individual items price. | Contractor |
| 11 | Technical Specifications | Sector Ministry |
| 12 | Correspondence between Employer and Contractor. | Sector Ministry |
| 13 | Draft of loan Credit Agreement. | Contractor |
| 14 | Engineering Standards | Contractor |
| 15 | Engineering Standards | Contractor |
| 16 | Site Layout drawings and location maps. | Sector Ministry |
| 17 | Detailed Drawings | Contractor |
| 18 | List of proposed sub-contractors. | Contractor |

**Procedures for undertaking the VFM audits:**

Step I: The MDA determines that procurement is single sourced and is therefore is subject to a VFM audit.

Step II: The MDA sends its Contract documentation to MOFEP.

Step III: MOFEP submits request for VFM audit to Crown Agents Ghana Ltd.

Step IV: CAGL submits the VFM audit report to MOFEP.

Step V: MOFEP and MDA concerned hold meetings with the contractor and amend the Contract taking into account the VFM report recommendations.

Step VI: The MDA proceeds with the contract or not, as per MOFEP directive.