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A

**BILL**

ENTITLED

**PETROLEUM REVENUE MANAGEMENT ACT, 2010**

AN ACT to provide the framework for the collection, allocation and management of petroleum revenue in a responsible, transparent and accountable manner for the benefit of the citizens of Ghana in accordance with Article 36 of the Constitution and for related matters.

PASSED by Parliament and assented to by the President:

*Preliminary matters*

**Application**

1. (1) This Act shall regulate the collection, allocation and management by government of petroleum revenue derived from upstream and midstream petroleum activity.

(2) Where there is any conflict between the provisions of this Act and

(a) any other Act or Regulations, or

(b) the terms of a petroleum authorisation,

on the collection, use and management of petroleum revenue, the provisions of this Act shall prevail.

**Establishment of Petroleum Account**

2. (1) The Petroleum Account is hereby established as a designated account at the Bank of Ghana to receive and disburse petroleum revenue due to the Republic and derived from upstream and midstream activities in accordance with the provisions of this Act.

(2) Petroleum revenue shall be deposited in the Petroleum Account for subsequent transfers to the budget and the Ghana Petroleum Funds.

**Payment into Petroleum Account**

3. (1) Despite provisions to the contrary in any Act, Regulation or agreement in existence before the commencement of this Act, petroleum revenue due to the Republic from whatever source derived in or outside the country shall be assessed, collected and accounted for by the Ghana Revenue Authority.

(2) The petroleum revenue assessed as due in each month shall be paid by direct transfer into the Petroleum Account by the fifteenth day of the ensuing month by the entities liable to make the payment.

(3) Where the liability of an entity to make a payment is not discharged on or before the due date, the entity shall pay an additional five percent of the amount in default for each day of default or the default rate established under any other law, whichever is higher.

(4) For purposes of this Act,

(a) petroleum revenue paid into the Petroleum Account shall not be considered as part of the normal tax revenue pool and the Ghana Revenue Authority Act, 2009, (Act 791) shall not apply, and

(b) the determination of any statutory earmark funds shall not apply.

**Payment with petroleum in place of cash**

4. (1) Where a payment is made with petroleum instead of cash, the US Dollar cash equivalent of the crude petroleum on the day it is received shall be reported and recognised as the payment for the crude oil by the Ghana Revenue Authority.

(2) The proceeds of the sale of the crude petroleum shall be credited to the Petroleum Account within sixty calendar days after the receipt of the crude petroleum.

(3) The allowable marketing cost shall be reimbursed to the National Oil Company as approved by the Minister and shall be a charge on the Petroleum Account.

(4) Where payments are made in crude petroleum, the currency equivalent valued on the date of receipt for the purpose of reporting shall be shown as an asset of the Petroleum Account of the payment.

#### **Prohibited use of Petroleum Account**

5. (1) The assets of the Petroleum Account shall not be used

- (a) to provide credit to the government, public enterprises, private sector entities or any other person or entity, and
- (b) as collateral for debts, guarantees, commitments or other liabilities of any other entity.

(2) In order to preserve revenue streams from petroleum and ensure the object of this Act, there shall not be any borrowing against the Petroleum Reserves.

#### **Petroleum Account Receipts**

6. (1) The following shall form the Petroleum Account gross receipts:

- (a) royalties from oil and gas, additional oil entitlements, surface rentals, initial carried interest, other receipts from any petroleum operations and from the sale or export of petroleum;
- (b) any amount received from direct or indirect participation of the government in petroleum operations;
- (c) corporate income taxes in cash from upstream and midstream petroleum companies;
- (d) any amount payable by the National Oil Company as corporate income tax, royalty, dividends, or any other amount due in accordance with the laws of Ghana; and
- (e) any amount received by government directly or indirectly from petroleum resources not covered by paragraphs (a) to (d) including where applicable, capital gains tax derived from the sale of ownership of exploration, development and production rights.

*Other petroleum receipts*

#### **Participating interest**

7. (1) Revenue due from the Republic's equity interest through the initial carried interest and the additional participating interest shall be fully paid into the Petroleum Account.

(2) The National Oil Company may make its claim for capitalisation, operational and other direct expenditures through the normal national budgetary process.

#### **Transparency and accountability of petroleum receipts**

8. (1) For the purpose of transparency and accountability, the records of petroleum receipts in whatever form, shall simultaneously be published by the Minister in the *Gazette* and in at least two national daily newspapers, no more than thirty working days after the end of the applicable quarter.

(2) Information required to be made public shall also be published online on the website of the Ministry and on the website of Parliament effective the publication date.

### **Management of the Petroleum Reserve Accounts expenses**

9. (1) The Bank of Ghana shall deduct reasonable management expenses from the petroleum receipts of the Petroleum Reserve Account by direct debit.

(2) The deduction shall be in accordance with the best international practices and as provided for in the Operations Management Agreement entered into between the Minister and the Bank of Ghana under section 26.

### *Allocations and disbursements*

### **Establishment of the Ghana Stabilisation Fund**

10. (1) There is hereby established the Ghana Stabilisation Fund

(2) The object of the Ghana Stabilisation Fund is to cushion the impact on or sustain public expenditure capacity during periods of unanticipated revenue shortfalls whether caused by a fall in the petroleum price or through adverse production changes.

### **Establishment of the Ghana Heritage Fund**

11. (1) There is hereby established the Ghana Heritage Fund.

(2) The object of the Heritage Fund is to provide an endowment to support the welfare of future generations after the underground petroleum has been depleted.

### **The Ghana Stabilisation Fund and Ghana Heritage Fund inflows**

12. (1) The Ghana Stabilisation Fund and Ghana Heritage Fund are collectively to be referred to as the Ghana Petroleum Funds.

(2) The Ghana Stabilisation Fund and the Ghana Heritage Fund shall both receive from the Petroleum Account, excess petroleum revenue as savings for the objects intended by the provisions of this Act.

### **Withdrawals from the Ghana Stabilisation Fund**

13. (1) Where petroleum revenues collected in each quarter fall below one-quarter of the Annual Budget Funding Amount for that financial year, withdrawals may be made from the Ghana Stabilisation Fund as follows, whichever is the lesser amount:

(a) either seventy percent of the estimated amount of the shortfall of petroleum revenues for that quarter; or

(b) twenty-five percent of the balance standing to the credit of the Ghana Stabilisation Fund at the beginning of the fiscal year.

(2) In the event of successive petroleum revenue shortfalls in the second and third quarters in any given financial year, the amount to be withdrawn at the end of the third quarter shall be double the amount of the third quarter shortfall up to a maximum of forty percent of the balance standing to the credit of the Ghana Stabilisation Fund at the beginning of the fiscal year.

(3) Transfer out of the Stabilisation Fund shall only be done for the purpose of alleviating shortfalls in petroleum revenue and in accordance with subsection (1) and (2).

### **Withdrawals from the Ghana Heritage Fund**

14. Withdrawals from the Ghana Heritage Fund shall be according to the withdrawals rule in section 13.

### **Finality of payments into the Petroleum Reserves Account**

15. An obligation to make a payment into the Petroleum Account, the Ghana Stabilisation Fund or the Ghana Heritage Fund shall not be discharged until the entire amount has been deposited integrally and unconditionally into the respective earmarked receipts accounts.

#### **Adjustments and reconciliations to the Petroleum Reserves Accounts**

16. (1) Not later than the end of the first quarter of each year, beginning 2012, the Minister shall reconcile the actual total petroleum receipts and the Annual Budget Funding Amount of the immediately preceding year and shall submit a written report to Parliament.

(2) The report shall include the following information:

- (a) the Annual Budget Funding Amount for the immediately preceding two years;
- (b) the actual inflows and outflows of the Petroleum Account for that year;
- (c) the balance of actual receipts for the year being reconciled over the Annual Budget Funding Amount;
- (d) recommendations for the reconciliations and adjustments needed to account for any deviations so that the inflows and outflows related to the Ghana Petroleum Funds match the actuals of the year.

(3) The report shall be published in the *Gazette* and at least two national dailies not later than April 30<sup>th</sup> of the year in which the reconciliation is carried out.

#### **Disbursement from the Petroleum Account**

17. Disbursement from the Petroleum Account shall only be made to

- (a) the Consolidated Fund in support of the national budget,
- (b) the Ghana Petroleum Funds for purposes of savings and investments, and
- (c) exceptional deductions according to the provisions of this Act.

#### **Benchmark Revenue**

18. Not later than September 1<sup>st</sup> of each year, the Minister shall estimate and certify the Benchmark Revenue using the formula set out in the First Schedule.

#### **The Annual Budget Funding Amount**

19. (1) Beginning the year 2011, the Annual Budget Funding Amount from petroleum revenues shall be set within the range of fifty to seventy percent of the Benchmark Revenue.

(2) The exact percentage of the Benchmark Revenue which shall be adopted as the Annual Budget Funding Amount shall vary from year to year guided by a medium-term development strategy aligned with a long-term development framework, the economy's absorptive capacity and the need for prudent macroeconomic management.

(2) For each fiscal year, the percentage of the Benchmark Revenue allocated for spending shall be approved by Parliament as part of the national budgetary process.

(3) The range of the spending allocation determined under subsection (1) shall be reviewed every three years with the first review to occur in 2014.

(4) The review shall be conducted by the Minister taking into account the development needs as well as the absorptive capacity of the economy and cognisant of the need to maintain macroeconomic stability.

(5) Any proposed changes following the review shall be subject to ratification by a resolution of Parliament supported by the votes of not less than two-thirds of the members of the Parliament.

### **Transfers to the Consolidated Fund**

**20.** (1) Transfer of the Annual Budget Funding Amount from the Petroleum Account to the Consolidated Fund

- (a) shall be in quarterly instalments of one-quarter of the Annual Budget Funding Amount or as the Minister may recommend; and
- (b) shall only take place after publication of the Annual Budget in the *Gazette* confirming the appropriation amount approved by Parliament for that fiscal year.

(2) The total amount withdrawn from the Petroleum Account for budget funding for any fiscal year shall not exceed the Annual Budget Funding Amount approved by Parliament for that fiscal year.

### **Transfers to the Consolidated Fund when petroleum production ceases**

**21.** (1) Within one year after petroleum production ceases, the moneys held in both the Ghana Stabilisation Fund and the Ghana Heritage Fund shall be consolidated into a single Ghana Petroleum Fund after which the Ghana Stabilisation Fund and the Ghana Heritage Fund shall cease to exist.

(2) From the beginning of the year immediately following when petroleum production ceases, the Annual Budget Funding Amount shall not exceed the sum of profit tax on gas commercialisation, dividends from the National Oil Company and the real income or earnings on the Ghana Petroleum Fund.

(3) The real income or earnings on the Ghana Petroleum Fund shall be equivalent to the real rate of return on the balance of the Ghana Petroleum Fund on December 31 of the previous fiscal year as calculated by the Bank of Ghana.

### **Use of the Annual Budget Funding Amount**

**22.** (1) Petroleum revenue, its use and expenditure shall be part of the national budget and is subject to the same budgetary processes that are necessary to ensure the efficient allocation and monitoring of any use.

(2) The allocation of the Annual Budget Funding Amount shall be

- (a) to maximize the rate of economic development,
- (b) to promote an equitable distribution of the national wealth and equality among citizens, and
- (c) guided by a long-term national development strategy aligned with a medium-term expenditure framework as approved by Parliament.

(3) Unless otherwise directed by the national development plan, spending of petroleum revenues within the budget should give priority to:

- (a) agriculture and agro-business;
- (b) human resource development;
- (c) physical infrastructure and service delivery in education and health;
- (d) water and sanitation;
- (e) road, rail, and port infrastructure;
- (f) rural development;
- (g) the strengthening of the institutions of government concerned with governance and the maintenance of law and order;
- (h) public safety and security;

- (i) alternative energy sources;
- (j) environmental protection, forest management and the protection of water bodies; and
- (k) provision of social welfare and the protection of the physically handicapped and disadvantaged citizens.

(4) For any fiscal year, a minimum of seventy percent of the Annual Budget Funding Amount shall be directed towards public investment expenditures consistent with the long-term national development plan, or with subsection (3) and with the view to accelerate growth and job creation, human development and the provision of basic services and to enhance good governance, public safety and civic responsibility.

### **Statutory earmarking prohibited**

**23.** Outside of the national budget allocations, extra budgetary activities and statutory earmarking of petroleum revenues for any special considerations is prohibited.

### **Transfers to the Ghana Heritage Fund and Ghana Stabilisation Fund**

**24.** (1) Commencing in the year 2011 until the year when petroleum production ceases, the following rules shall apply:

- (a) where petroleum revenue collected in each quarter of any financial year exceeds one-quarter of the Annual Budget Funding Amount of the financial year, as determined in section 14, the United States Dollar equivalent of the excess revenue collected shall be transferred from the Petroleum Account into the Ghana Petroleum Funds, and
- (b) a minimum of thirty percent of the excess revenue determined in subsection (1)(a) shall be transferred into the Ghana Heritage Fund and the balance shall be transferred into the Ghana Stabilisation Fund each year.

(2) The split in subsection (1)(b) of the excess revenue shall be reviewed every three years, exclusive of the year of revision, with the first revision to occur in 2014.

(3) The accumulated resources of the Ghana Stabilisation Fund shall not exceed a predetermined amount as recommended by the Minister and approved by Parliament and the amount shall be reviewed from time to time as necessitated by macroeconomic conditions.

(4) Once the predetermined amount is attained, subsequent transfers into the Ghana Stabilisation Fund shall be earmarked as additional transfers into the Ghana Heritage Fund or for debt repayment.

(5) The transfer and any subsequent transfers shall be made not later than the end of the month following the quarter in respect of which the excess revenue was calculated.

### **Transfers for exceptional purposes**

**25.** (1) Where a transfer is made from the Petroleum Account for exceptional purposes to refund tax in the event of overpayment of tax, the transfer amount shall represent a reduction of the Petroleum Account receipts and shall not be considered as part of the allowable transfer under the relevant Appropriation Act.

(2) Where petroleum operations are on-shore, compensation to affected and displaced communities and the appropriate royalty payments shall be in line with compensation and royalty payments under other relevant laws.



## *Management and investment of Ghana Petroleum Funds*

### **Obligations of the Minister**

**26.** The Minister shall

- (a) develop the investment policy for the investment of the Ghana Petroleum Funds,
- (b) be responsible for the overall management of the Ghana Petroleum Funds and shall oversee the transfers into and disbursements from the Ghana Petroleum Funds,
- (c) not make any decisions in relation to the investment strategy or management of the Ghana Petroleum Funds without first seeking the advice of the Investment Advisory Committee and the Governor, subject to the provisions of section 40, and
- (d) enter into an Operations Management Agreement with the Bank of Ghana for the operational management of the Ghana Petroleum Funds, in form and substance similar to the format in the Second Schedule of this Act.

### **Management obligations of the Bank of Ghana**

**27.** (1) The Bank of Ghana is responsible for the day-to-day operational management of the Petroleum Reserve Accounts under the terms of the Operations Management Agreement.

(2) The Bank of Ghana shall manage the Petroleum Reserve Accounts prudently within the framework of the operational and management strategy provided by the Minister, taking cognisance of

- (a) prudential standards used by the Bank of Ghana for similar investments,
- (b) established and internationally recognised principles of good governance for the benefit of the Republic of Ghana, and
- (c) the need to support the national currency against destabilising factors in accordance with national monetary and foreign exchange policies.

### **Investment rules**

**28.** (1) The resources of the Ghana Petroleum Funds shall be invested in qualifying instruments prescribed in this Act.

(2) The range of instruments designated as qualifying instruments shall be reviewed every three years or sooner by the Minister on the advice of and in consultation with the Investment Advisory Committee.

### **Qualifying Instruments**

**29.** (1) Subject to other provisions of this section, a qualifying instrument is:

- (a) a debt instrument denominated in internationally convertible currency that bears interest or a fixed amount equivalent to interest,
  - (i) that is of an investment grade security, and
  - (ii) that is issued by or guaranteed by the International Monetary Fund, World Bank or by a sovereign State, other than the Republic of Ghana, if the issuer or guarantor has investment grade rating; or
- (b) an internationally convertible currency deposit with, or a debt instrument denominated in any internationally convertible currency that bears interest or a fixed amount equivalent to interest issued by:

- (i) the Bank for International Settlements;
  - (ii) the European Central Bank; or
  - (iii) the Central Bank of a sovereign State, other than the Republic of Ghana, with a long-term investment grade rating.
- (c) a derivative instrument
- (i) that is solely based on an instrument that satisfies the requirements of this subsection; and
  - (ii) where its acquisition reduces the financial exposure to the risks associated with the underlying instrument or instruments.

(2) A Manager of the Ghana Petroleum Funds shall dispose of any instrument that ceases to be a qualifying instrument because of a change in the rating of the instrument or the issuer of the instrument immediately or as soon as is practicable after the change in rating of the instrument or the issuer.

### **Reports on the Ghana Petroleum Funds**

**30.** (1) The Bank of Ghana shall present to the Minister and to the Investment Advisory Committee, quarterly reports on the performance and activities of the Ghana Heritage Fund and the Ghana Stabilisation Fund not later than the end of the month following the end of each quarter.

(2) The Bank of Ghana shall publish semi-annual reports on the Ghana Heritage Fund and Ghana Stabilisation Fund not later than the 15th of August and the 15th of February of each year and shall make the report publicly available on its website.

#### *Investment Advisory Committee*

### **Investment Advisory Committee**

**31.** There is hereby established an Investment Advisory Committee to advise the Minister and for the general performance monitoring of the management of the Ghana Petroleum Funds.

### **Functions of the Advisory Committee**

**32.** (1) The functions of the Advisory Committee are to:

- (a) design and propose to the Minister, the investment policy of the Ghana Heritage Fund and the Ghana Stabilisation Fund and the Minister shall submit it for approval by Parliament;
- (b) advise the Minister on the broad investment guidelines that the Minister shall provide to the Governor, taking cognisance of international best practices of investments of a similar nature;
- (c) develop for the Minister, the benchmark portfolio of desired returns from and appropriate risks of investment of the Ghana Heritage Fund and the Ghana Stabilisation Fund, taking cognisance of the prudential standards used by the Bank of Ghana for investments of a similar nature;
- (d) review reports and audits and generally monitor the performance of the Ghana Heritage Fund and the Ghana Stabilisation Fund against the benchmark.

(2) Any advice given by the Advisory Committee on investment strategy or the management of the Ghana Heritage Fund and the Ghana Stabilisation Fund shall take into account:

- (a) the overall consideration that the Ghana Petroleum Funds are funds of income from the exploitation of non-renewable petroleum resources and the overall objective that they are for the benefit of current and future generations of citizens of Ghana;
- (b) the current economic conditions, opportunities and constraints in investment markets and the constraints under which the Bank of Ghana and other key institutions in Ghana operate;
- (c) the need to ensure that sufficient funds are available when needed for transfers to meet unanticipated petroleum revenue shortfalls.

### **Appointment of members of the Advisory Committee**

33. (1) The Advisory Committee comprises seven members, at least one of whom is a woman, who shall be persons of proven competence in finance, investment, economics, business management or law, including a senior officer not below the rank of Deputy Director or its equivalent from

- (a) the Bank of Ghana, and
- (b) the Ministry responsible for Finance.

(2) Each member shall satisfy the criteria for a fit and proper person in the Banking Act, 2004 (Act 673).

(3) The Minister in consultation with the Governor, shall appoint the members of the Advisory Committee for the Ghana Petroleum Funds.

(4) The Minister shall appoint a member to be the chairperson of the Advisory Committee.

### **Tenure of office of members**

34. (1) A member of the Advisory Committee shall hold office for two or three years and is eligible for re-appointment, but a member shall not be appointed for more than two consecutive terms.

(2) A member of the Advisory Committee shall have security of tenure subject to the provisions of subsections (7) and (8) of this section.

(3) A member appointed for a three-year term is not eligible for re-appointment.

(4) A member appointed for a two-year term is eligible for one re-appointment but only for another two year term.

(5) A member of the Advisory Committee may at any time resign from office in writing addressed to the President through the Minister.

(6) A member who is absent from two consecutive meetings of the Advisory Committee without sufficient cause ceases, to be a member of the Advisory Committee and shall be immediately replaced.

(7) The President may by letter addressed to a member revoke the appointment of that member.

(8) Where a member of the Advisory Committee is, for a sufficient reason, unable to act as a member, the Minister shall determine whether the inability would result in a declaration of a vacancy.

- (9) Where there is a vacancy
  - (a) under subsections (5) or (6),

(b) as a result of a declaration under subsection (8), or  
(c) by reason of the death of a member,  
the Minister shall notify the President of the vacancy and the President shall appoint another person to fill the vacancy.

### **Meetings of the Advisory Committee**

**35.** (1) The Advisory Committee shall meet at least once every two successive months for the performance of its functions at the times and in the places determined by the chairperson.

(2) The chairperson shall at the request in writing by three or more members of the Advisory Committee convene an extraordinary meeting of the Advisory Committee within seven days after receipt of the request.

(3) The quorum at a meeting of the Advisory Committee is five members of the Advisory Committee.

(4) The chairperson shall preside at meetings of the Advisory Committee and in the absence of the chairperson, a member elected by the members present from among their number shall preside.

(5) Matters before the Advisory Committee shall be decided by a majority of the members present and voting and in the event of an equality of votes, the member presiding shall have a casting vote.

(6) The Advisory Committee may co-opt a person with technical expertise to assist with the performance of its functions.

(7) Non-members shall not vote on matters before the Advisory Committee.

### **Disclosure of interest**

**36.** (1) A member of the Advisory Committee who has an interest in a matter for consideration by the Advisory Committee

- (a) shall disclose the nature of that interest and the disclosure shall form part of the record of the consideration of the matter; and
- (b) shall not participate in the deliberations of the Advisory Committee in respect of that matter.

(2) A member ceases to be a member of the Advisory Committee, if that member has an interest in a matter before the Advisory Committee and

- (a) fails to disclose that interest, or
- (b) participates in the deliberations of the Advisory Committee in respect of the matter.

### **Publication of membership of the Advisory Committee**

**37.** (1) The Minister shall cause the names of members of the Advisory Committee to be published in the *Gazette*.

(2) The *Gazette* publication shall be updated each time that the membership of the Advisory Committee changes.

### **Allowances**

**38.** Members of the Advisory Committee shall be paid the allowances determined by the Minister and approved by Parliament.

### **Secretariat of the Advisory Committee**

**39.** The Ministry responsible for Finance shall provide the secretariat for the Advisory Committee and any other administrative support or technical staff required by the Advisory Committee for the performance of its functions.

### **Absence of advice from the Advisory Committee**

**40.** (1) Where the Advisory Committee does not provide advice to the Minister within ten working days after a request or within a shorter period determined by the Minister, taking into account the nature of the advice sought, this shall not impede the Minister from taking a decision in consultation with the Governor.

(2) Despite section 32(1)(c), the Minister shall not be prevented from taking an urgent investment decision in consultation with the Governor where there is insufficient time to seek the advice of the Advisory Committee in relation to a particular decision.

(3) Where the Minister takes a decision without the advice of the Advisory Committee, the Minister shall report the decision to the Advisory Committee in writing within forty-eight hours after taking the decision.

(4) The Minister shall re-examine the decision and take the necessary follow-up action having regard to any subsequent advice provided by the Advisory Committee.

### **Release of advice from the Advisory Committee**

**41.** The Minister shall provide Parliament with any advice given by the Advisory Committee without delay upon request by Parliament.

### **Oversight of and reporting on the Ghana Petroleum Funds**

**42.** (1) The Advisory Committee shall submit quarterly information reports and analysis on the performance and activities of the Ghana Heritage Fund and the Ghana Stabilisation Fund to the Minister not later than thirty working days after the receipt of quarterly reports from the Bank of Ghana in accordance with the reporting requirements of the Bank of Ghana.

(2) The Advisory Committee is responsible for reporting to the Minister on the performance and activities of the Ghana Heritage Fund and the Ghana Stabilisation Fund for the purpose of reporting in the annual budget and financial statements.

#### *Encumbrances, Auditing and Reporting*

### **Encumbrances on the assets of the Petroleum Account**

#### **and the Ghana Petroleum Funds**

**43.** (1) The amounts in the Petroleum Account and the Ghana Petroleum Funds shall remain the property of Republic of Ghana at all times.

(2) Any contract, agreement or arrangement, to the extent that it purports to encumber the assets of the Petroleum Reserves Accounts, whether by way of guarantee, security, mortgage or any other form of encumbrance is contrary to this Act and is null and void.

#### *Audit of the Petroleum Reserves Accounts*

## **Public funds**

44. The Petroleum Account, the Ghana Heritage Fund and the Ghana Stabilisation Fund are public funds for the purpose of article 175 of the Constitution.

## **Books of the Petroleum Reserves Accounts**

45. The Bank of Ghana shall keep proper books of accounts and records on the Petroleum Account and the Ghana Petroleum Fund.

### **Internal audit**

46. The accounts, records and other documents related to the Petroleum Funds shall be audited by the internal audit department of the Bank of Ghana and a quarterly report shall be submitted by the Governor to the Minister, the Auditor-General and any other person required by law to receive the report.

### **External audit**

47. (1) The Auditor-General is responsible for the external audit of the Petroleum Reserves Accounts each year.

(2) Where the Auditor-General delegates the responsibility for the external audit of the Petroleum Reserves Accounts, the appointment of the external auditor shall not exceed three years for each contract and is renewable for not more than two contract periods in succession.

(3) The procurement of the services of the independent auditor shall be in accordance with the Public Procurement Act 2003 (Act 663).

### **Annual audit**

48. (1) The Bank of Ghana shall, not later than three months after the end of its financial year, submit to the Auditor-General for audit, statements and relevant documents for the

- (a) Petroleum Account receipts and disbursements,
- (b) Ghana Heritage Fund receipts and withdrawals, and
- (c) Ghana Stabilisation Fund receipts and withdrawals.

(2) The Auditor-General shall, not later than three months after the submission of the statements referred to in subsection (1), submit the Auditor-General's report on the statements to Parliament .

(3) The Auditor-General shall determine if

- (a) the accounts have been properly kept;
- (b) the payments due to the Petroleum Account, to the Ghana Heritage Fund and the Ghana Stabilisation Fund have been made; and
- (c) the Ghana Heritage Fund and the Ghana Stabilisation Fund are managed in accordance with the provisions of the Act.

(4) The Auditor-General shall publish the report within thirty days after its submission to Parliament.

### **Special audits**

49. In addition to the audit prescribed in section 46, the Auditor-General may carry out special audits or reviews of the Ghana Petroleum Funds in the public interest and shall submit to Parliament reports on the audits or reviews undertaken.

## **Annual report on the Petroleum Account and the Ghana Petroleum Funds**

**50.** (1) The Minister shall submit an annual report on the Petroleum Account and the Ghana Petroleum Funds as part of the annual presentation of the budget statement and economic policies to Parliament.

(2) The annual report shall be prepared in a manner that makes it readily adaptable for dissemination to the public and shall contain the following information for the fiscal year for which the report is prepared:

- (a) audited and certified financial statements comprising
  - (i) the receipts and transfers to and from the Petroleum Account,
  - (ii) the deposits and withdrawals to and from the Ghana Heritage Fund and the Ghana Stabilisation Fund, and
  - (iii) a balance sheet, including a note listing the qualifying instruments of the Ghana Petroleum Funds;
- (b) a report signed by the Minister describing the activities of the Ghana Petroleum Funds in the fiscal year of the report, including the advice provided by the Investment Committee, any reports prepared by the Auditor-General drawing attention to particular issues or matters that may be of concern or interest to Parliament;
- (c) the income derived from the investment of the Ghana Heritage Fund and the Ghana Stabilisation Fund during the fiscal year compared with the income of the previous two fiscal years;
- (d) a comparison of the income in paragraph (c) with
  - (i) the benchmark performance indices provided to the Minister, and
  - (ii) the income of the previous two fiscal years after adjusting for inflation;
- (e) the liabilities of government borrowings shall be reflected in the presentation of the annual report so as to give a true representation of the past and expected future development of the net financial assets of government and the rate of savings; and
- (f) a list of names of persons holding positions relevant for the operation and performance of the Ghana Heritage Fund and the Ghana Stabilisation Fund, including
  - (i) the Minister,
  - (ii) the chairperson and members of the Advisory Committee,
  - (iii) the Governor of the Bank of Ghana, and
  - (iv) the investment manager, if any.

(3) The sources of the information described in subsection (2) in whatever form including the reports and statements, shall be annexed to the annual report.

*Accountability, transparency and public oversight*

**Transparency as a fundamental principle**

**51.** (1) The management of petroleum revenue and savings shall always be carried out with the highest internationally accepted standards of transparency and good governance.

(2) The duties concerned with ancillary matters of petroleum revenues and savings shall be discharged with the highest internationally accepted standards of transparency and good governance.

(3) Information or data, the disclosure of which could in particular prejudice significantly the performance of the Ghana Petroleum Fund, may be declared by the Minister as confidential, subject to the approval of Parliament.

(4) The declaration of confidentiality shall provide a clear explanation of the reasons for treating the information or data as classified, taking into account the principles of transparency and the right of the public as regards access to information.

(5) The declaration of confidentiality shall not limit access to information by Parliament and the Public Interest Accountability Committee established under this Act.

(6) Any information that is classified at the time when it could have been published, as well as the reason for it being treated as classified, shall be made available to the public upon request three years after the date on which it could have been published unless the reasons for it being classified are still valid.

(7) Parliament, the government, the Minister, the Bank of Ghana and the Advisory Committee in the performance of their functions and competencies under this Act, shall take the necessary measures to entrench transparency mechanisms and free access by the public to non-classified information.

(8) The Minister shall ensure that this Act, the Regulations and any instructions related to the Ghana Petroleum Funds, the Operations Management Agreement and the annual reports are readily available to the public.

#### **Non-compliance with an obligation to publicise information**

52. A person who fails to comply with any obligation to publish information provided for in this Act, or causes another person to fail to comply with, or in any manner hinders or causes another person to hinder the compliance with these obligations, commits an offence and is liable on summary conviction to a fine not exceeding two hundred and fifty penalty units.

#### **Public Interest and Accountability Committee**

53. There is hereby established a Public Interest and Accountability Committee.

#### **Objects of the Accountability Committee**

54. The objects of the Accountability Committee are:

- (a) to monitor and evaluate compliance with this Act by government and other relevant institutions in the discharge of their duties in relation to the use and management of petroleum revenues and resources as required by law;
- (b) to provide a formal active voice in the use and management of petroleum revenues, by providing space and the platform for the public to debate whether spending prospects and management of revenues adhere to development priorities;
- (c) to provide independent assessments on the use and management of petroleum revenues and resources to assist Parliament and the executive in the oversight of and performance of related functions; and
- (d) to ensure that petroleum revenue is used for the benefit of current and future generations of citizens.

#### **Functions of the Accountability Committee**

55. (1) To achieve its objects, the Accountability Committee shall



- (a) consult widely relating to the use of petroleum revenues and resources; and
- (b) determine the rules of procedure under which it will operate.

(2) The Accountability Committee shall have its own secretariat that will facilitate the performance of its functions.

(3) Parliament shall approve and provide adequate funding for the operations of the Accountability Committee, including appropriate allowances for members of the Committee, through the budgetary appropriation for the operation of Parliament..

### **Membership of the Public Interest and Accountability Committee**

**56.** (1) The Accountability Committee consists of eleven members including

- (a) a member to represent independent policy research think Tanks nominated by the think-tanks,
- (b) a member to represent civil-society organisations and Community-based organisations nominated by civil society,
- (c) a member each nominated by
  - (i) Trade Union Congress,
  - (ii) National House of Chiefs,
  - (iii) Association of Queen Mothers,
  - (iv) Association of Ghana Industries and Chamber of Commerce,
  - (v) Ghana Journalists Association,
  - (vi) Ghana Bar Association,
  - (vii) Institute of Chartered Accountants,
  - (viii) Ghana Extractive Industries Transparency Initiative, and
  - (ix) Academia.

(2) The members of the Accountability Committee shall be appointed by the President in accordance with Article 195 of the Constitution.

(3) A decision of the Accountability Committee shall only be binding if taken by a majority with a quorum of seven members.

### **Tenure of members of the Accountability Committee and eligibility for appointment**

**57.** (1) The tenure of office of a member of the Accountability Committee shall be two or three years.

(2) A member appointed for a two-year tenure is eligible for re-appointment but not for more than two consecutive terms.

(3) A member appointed for a two-year term is only eligible to be appointed for another two year term.

(4) A member appointed for a three year term is not eligible for re-appointment.

(5) A person is not eligible for appointment if that person

- (a) has been removed from office,
- (b) has been convicted of a criminal offence, or is on trial in a court of law,
- (c) has been declared bankrupt or insolvent.

(6) Members appointed to the Accountability Committee have security of tenure and unless otherwise provided for by law, or for medical reasons and may not be suspended, retired or removed from office.

### **Reporting**

**58.** The Public Interest and Accountability Committee shall

- (a) publish a semi-annual report and an annual report in at least two national dailies by the 15th of September and 15th of March each year;
- (b) publish the reports on the Accountability Committee's website;
- (c) hold public meetings twice each year to report on its mandate to the general public; and
- (d) submit a copy of its semi-annual report and annual report to the President and to Parliament.

### **Allowances**

**59.** Members of the Accountability Committee shall be paid the allowances determined by the Minister and approved by Parliament.

### *Miscellaneous matters*

### **Transparency and accountability of petroleum receipts**

**60.** (1) The records of petroleum receipts in whatever form for the purpose of transparency and accountability shall simultaneously be published by the Minister in the *Gazette* and in at least two national daily newspapers, no more than thirty working days after the end of the applicable quarter.

(2) The information required to be made public shall also be published online on the websites of the Ministry of Finance and Parliament effective the publication date.

### **Penalties**

**61.** (1) A person who fails to do anything required by this Act, or unlawfully discloses any document or information pertaining to the operations of the Ghana Petroleum Funds or uses the information or document for personal benefit or advantage, commits an offence and is liable on summary conviction to a fine of the Ghana cedi equivalent of five hundred thousand dollars and to a term of imprisonment for two years or to both.

(2) Penalties provided under this Act shall not limit civil liability.

### **Transitional and final provisions**

**62.** The appointments necessary for the effective functioning of the Advisory Committee and the Accountability Committee shall be made within three months after the commencement of this Act.

### **Regulations**

**63.** (1) The Minister may by legislative instrument make Regulations for the effective performance of this Act and in particular shall make Regulations for or with respect to:

- (a) the reference price or pricing formula for purposes of taxation or of determining the payment obligations to the government of the petroleum licensed operators;
- (b) the measurement of the quantity of petroleum produced and calibrated for the purposes of determining the basis of royalty and any other payments due to the Republic; and
- (c) the operational and management guidelines for the management of the Ghana Petroleum Funds.

### **Interpretation**

64. In this Act unless the context otherwise requires,

- “Accountability Committee” means the Public Interest and Accountability Committee established under section 53;
- “Advisory Committee” means the Investment Advisory Committee established under section 31;
- “Annual Budget Funding Account” means the amount of petroleum revenue allocated for spending in the current fiscal year budget;
- “Auditor” means the Auditor General;
- “Benchmark Revenue” means the estimated revenue from petroleum activities expected by the Government for the corresponding fiscal year;
- “Business or Working day” means any day, except Saturday or Sunday that banks are open for business in Ghana;
- “Central Bank” means the Bank of Ghana;
- “confidential information” means information that is designated or marked as “confidential”;
- “fiscal year” means the period of twelve months from 1st January to 31st December;
- “Ghana Heritage Fund” means a public fund established under Section 11 to receive a percentage of petroleum revenues for investment abroad in financial instruments towards the welfare of future generation of Ghanaians;
- “Ghana Stabilisation Fund” means a public fund established under Section 10 to receive a percentage of petroleum revenues for investment abroad in financial instruments and from which budget support to government may be provided in accordance with the provisions of this Act;
- “Ghana Petroleum Funds” means the Petroleum Account, the Ghana Heritage Fund and the Ghana Stabilisation Fund;
- “Ghana Revenue Authority” means the Ghana Revenue Authority established under Ghana Revenue Authority Act, 2009 (Act 791);
- “Government” means any authority by which the executive authority of the Republic is duly exercised;
- “Governor” means the Governor of the Bank of Ghana;
- “Investment Manager” means the Central Bank or any person or entity appointed as investment or portfolio manager for purposes of this Act;
- “Manager of the Ghana Petroleum Funds” means a person appointed by the Bank of Ghana to act as a financial intermediary for the proper management of the Ghana Petroleum Funds including fund managers, brokers and dealers;
- “Minister” means the Minister responsible for Finance;
- “Ministry” means the Ministry of Finance and Economic Planning;
- “National Development Plan” means a plan prepared by the National Development Planning Commission;
- “National Oil Company” means the Ghana National Petroleum Corporation and any other national oil or gas company that may be established by the government to participate directly in petroleum activities.
- “payer” means any person or entity on whom there is an obligation in accordance with this Act or any other Act or legal instrument to make a payment into the Petroleum Revenue Reserve Accounts;

“petroleum” has the same meaning given to it in the Petroleum (Exploration and Production) Law, 1984 (PNDCL 84);

“Petroleum Account” means the transitory account established under section 2 of this Act;

“petroleum authorisation” means:

- (i) an access authorisation whether on-shore or off-shore, a petroleum contract, a prospecting authorisation or a seepage authorisation, or any agreement made in respect of the authorisation or contract, granted or entered into under the National Petroleum Authority Act, 2005 (Act 691); or
- (ii) an authorisation or production sharing contract, or any agreement made in respect of an authorisation or contract, granted or entered into under the Code;

“petroleum operations” means authorised activities under a petroleum authorisation;

“petroleum resources” means oil and gas in their natural state and the revenue or other entitlement accruing to Government from it;

“petroleum revenue” includes

- (a) royalty in cash or in equivalent barrels of oil or equivalent units of gas, payable by a licensed producer, including the National Oil Company or a company under a Production Sharing Agreement or other agreement;
- (b) corporate income taxes payable by licensed upstream and midstream operators;
- (c) the initial carried interest in whole or in part and net of principal repayments and applicable interest charges as determined by Parliament on the recommendation of the Minister;
- (d) additional oil entitlements;
- (e) dividends from the National Oil Company for Government’s equity interest;
- (f) the investment income derived from accumulated petroleum funds;
- (g) surface rentals paid by licensed producers or any other revenue determined by the Minister to constitute petroleum revenue;

“public funds” has the meaning ascribed to it under Article 175 of the Constitution;

“publish” means publication on the dates prescribed in this Act, at least in the two national dailies, the Daily Graphic and the Ghanaian Times and in any other additional medium provided for in this Act.;

“real rate of return on investment” means the nominal return on investment less the inflation or purchasing power adjustment that is necessary to preserve the real value of the accumulated funds;

“tax revenue” means any tax or duty imposed under Ghanaian law; and

- (d) to ensure that petroleum revenue is used for the benefit of current and future generations of citizens.

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  - (c) a member each nominated by
    - (i) Trade Union Congress,
    - (ii) National House of Chiefs,
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    - (vi) Ghana Bar Association,
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- (c) hold public meetings twice each year to report on its mandate to the general public; and
- (d) submit a copy of its semi-annual report and annual report to the President and to Parliament.

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(2) The information required to be made public shall also be published online on the websites of the Ministry of Finance and Parliament effective the publication date.

## **Penalties**

**61.** (1) A person who fails to do anything required by this Act, or unlawfully discloses any document or information pertaining to the operations of the Ghana Petroleum Funds or uses the information or document for personal benefit or advantage, commits an offence and is liable on summary conviction to a fine of the Ghana cedi equivalent of five hundred thousand dollars and to a term of imprisonment for two years or to both.

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- (b) the measurement of the quantity of petroleum produced and calibrated for the purposes of determining the basis of royalty and any other payments due to the Republic; and
- (c) the operational and management guidelines for the management of the Ghana Petroleum Funds.

## Interpretation

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- “Auditor” means the Auditor General;
- “Benchmark Revenue” means the estimated revenue from petroleum activities expected by the Government for the corresponding fiscal year;
- “Business or Working day” means any day, except Saturday or Sunday that banks are open for business in Ghana;
- “Central Bank” means the Bank of Ghana;
- “confidential information” means information that is designated or marked as “confidential”;
- “fiscal year” means the period of twelve months from 1st January to 31st December;
- “Ghana Heritage Fund” means a public fund established under Section 11 to receive a percentage of petroleum revenues for investment abroad in financial instruments towards the welfare of future generation of Ghanaians;
- “Ghana Stabilisation Fund” means a public fund established under Section 10 to receive a percentage of petroleum revenues for investment abroad in financial instruments and from which budget support to government may be provided in accordance with the provisions of this Act;
- “Ghana Petroleum Funds” means the Petroleum Account, the Ghana Heritage Fund and the Ghana Stabilisation Fund;
- “Ghana Revenue Authority” means the Ghana Revenue Authority established under Ghana Revenue Authority Act, 2009 (Act 791);
- “Government” means any authority by which the executive authority of the Republic is duly exercised;
- “Governor” means the Governor of the Bank of Ghana;
- “Investment Manager” means the Central Bank or any person or entity appointed as investment or portfolio manager for purposes of this Act;
- “Manager of the Ghana Petroleum Funds” means a person appointed by the Bank of Ghana to act as a financial intermediary for the proper management of the Ghana Petroleum Funds including fund managers, brokers and dealers;
- “Minister” means the Minister responsible for Finance;
- “Ministry” means the Ministry of Finance and Economic Planning;
- “National Development Plan” means a plan prepared by the National Development Planning Commission;
- “National Oil Company” means the Ghana National Petroleum Corporation and any other national oil or gas company that may be established by the government to participate directly in petroleum activities.

“payer” means any person or entity on whom there is an obligation in accordance with this Act or any other Act or legal instrument to make a payment into the Petroleum Revenue Reserve Accounts;

“petroleum” has the same meaning given to it in the Petroleum (Exploration and Production) Law, 1984 (PNDCL 84);

“Petroleum Account” means the transitory account established under section 2 of this Act;

“petroleum authorisation” means:

(i) an access authorisation whether on-shore or off-shore, a petroleum contract, a prospecting authorisation or a seepage authorisation, or any agreement made in respect of the authorisation or contract, granted or entered into under the National Petroleum Authority Act, 2005 (Act 691); or

(ii) an authorisation or production sharing contract, or any agreement made in respect of an authorisation or contract, granted or entered into under the Code;

“petroleum operations” means authorised activities under a petroleum authorisation;

“petroleum resources” means oil and gas in their natural state and the revenue or other entitlement accruing to Government from it;

“petroleum revenue” includes

(a) royalty in cash or in equivalent barrels of oil or equivalent units of gas, payable by a licensed producer, including the National Oil Company or a company under a Production Sharing Agreement or other agreement;

(b) corporate income taxes payable by licensed upstream and midstream operators;

(c) the initial carried interest in whole or in part and net of principal repayments and applicable interest charges as determined by Parliament on the recommendation of the Minister;

(d) additional oil entitlements;

(e) dividends from the National Oil Company for Government’s equity interest;

(f) the investment income derived from accumulated petroleum funds;

(g) surface rentals paid by licensed producers or any other revenue determined by the Minister to constitute petroleum revenue;

“public funds” has the meaning ascribed to it under Article 175 of the Constitution;

“publish” means publication on the dates prescribed in this Act, at least in the two national dailies, the Daily Graphic and the Ghanaian Times and in any other additional medium provided for in this Act.;

“real rate of return on investment” means the nominal return on investment less the inflation or purchasing power adjustment that is necessary to preserve the real value of the accumulated funds;

“tax revenue” means any tax or duty imposed under Ghanaian law; and



## **FIRST SCHEDULE**

### **Determining the Benchmark Revenue and Annual Budget Funding Amount from Petroleum Revenues**

#### **Benchmark Revenue from Petroleum Operations**

- (1) For the purposes of this section the annual Benchmark Revenue from petroleum operations shall be calculated on the basis of actual and expected average unit price for crude oil and natural gas derived from a seven-year moving average, the seven years being the four years immediately prior to the current financial year, the current financial year, and two years immediately following the current fiscal year.
- (2) The expected quantity shall be calculated on the basis of the expected average government take in gross oil over a three year horizon, the three years being the immediately preceding, the current financial year, and the one year ahead projection following the current fiscal year.
- (3) Expected revenue from crude oil is the product of the unit prices and quantity data of crude oil defined in paragraphs (1) and (2).
- (4) Expected gas royalty shall be calculated on the basis expected royalties on associated gas derived from a seven-year moving average, the seven years being the four years immediately prior to the current financial year, the current financial year and two years immediately following the current fiscal year.
- (5) Benchmark Revenue is the sum of the expected revenue from crude oil defined in paragraph (3), expected gas royalties defined in paragraph (4), and the expected dividends from the National Oil Company.

That is, for each fiscal year,

Benchmark Revenue = Expected current receipts from oil + Expected current receipts from gas + Expected dividends from the National Oil Company.

#### **Annual Budget Funding Amount**

- (6) The annual allocation to the budget from petroleum revenue for current spending is determined as:  
$$\text{Annual Budget Funding Amount} = \text{Predetermined percentage of Benchmark Revenue}$$
- (7) The predetermined percentage shall be determined on year-to-year basis.
- (8) For the purposes of this section “quarter” means a three-month period ending December 31, March 31, June 30 and September 30.
- (9) Assumptions upon which the calculations are made pursuant to paragraphs 1, 2, 3 and 4 above shall be clearly identified and explained, and any changes made in these assumptions in subsequent calculations shall be clearly pointed out.
- (10) Assumptions made shall be prudent, reflect international best practice of price forecasts and be based upon internationally recognized standards.
- (11) The forecasts and the amounts determined in accordance with the formula in paragraphs 1, 2 3 and 4 above shall be certified by a reputable Independent Auditor.

## **SECOND SCHEDULE**

## **Operations Management Agreement**

This Agreement is made on [date] between the Minister of Finance and Economic Planning (“Minister”) representing the Government of Ghana and the Bank of Ghana (“Central Bank”), hereinafter referred to as the “Parties”.

### **Whereas**

- (1) In accordance with Section 26 of the Ghana Petroleum Revenue Management Act (“Law”), the Minister is required to enter into an Operations Management Agreement with the Bank of Ghana for the operational management of the Ghana Heritage Fund and the Ghana Stabilisation Fund, which collectively shall be referred to as Ghana Petroleum Funds.
- (2) The Minister shall exercise the key functions and competencies of the Government, which has been assigned overall responsibility for the management of the Ghana Petroleum Fund.
- (3) The Bank of Ghana has been assigned the responsibility for the efficient operational management of the Ghana Petroleum Funds.

### **Now therefore it is agreed between the parties as follows:**

1. The Central Bank shall undertake the daily operational management of the Ghana Petroleum Funds and shall be accountable for its operational management to the Minister.

### **Obligations of the Minister**

2. The Minister shall be responsible for the overall management of the Ghana Petroleum Funds, which shall include the following functions to be exercised by the Minister:

- (a) to formulate broad policy for the management of the Ghana Petroleum Funds;
- (b) not less than fifteen days prior to the commencement of each calendar quarter, to provide a forecast of the cash requirements of Government for that quarter, including the projected timings and amounts to be transferred to and from the applicable Ghana Petroleum Funds;
- (c) to provide by Legislative Instrument the Regulations for the management of the Ghana Petroleum Funds, and to consult with the Governor and the Investment Advisory Committee concerning any changes that may be proposed to the regulatory framework;
- (d) to ensure that requests by the Central Bank for guidance on ad hoc policy decisions to enable it to implement the operational management of the Ghana Petroleum Funds are responded to clearly and in a timely manner; and
- (e) to consult with the Governor and the Investment Advisory Committee, as appropriate, concerning information to be released to the public;

### **Obligations of the Bank of Ghana**

3. The Central Bank shall be responsible for the operational management of the Ghana Petroleum Funds, which shall include the following functions:

- (a) the investment of the capital of the Ghana Petroleum Funds in financial instruments as set out in this Agreement, including exercising all the rights and

- complying with all obligations associated with the ownership of the Ghana Petroleum Funds' assets;
- (b) receiving and accounting for the investment income and other revenues of the Ghana Petroleum Funds;
  - (c) maintaining a register of all payments made as Ghana Petroleum Account's receipts without limiting the responsibilities of the proper authorities for administering tax and royalty payments;
  - (d) maintaining the books of account for the Ghana Petroleum Funds on behalf of the Minister;
  - (e) appointing and dismissing banking correspondents, dealers, brokers, custodians and other financial intermediaries necessary for the proper management of the Ghana Petroleum Funds;
  - (f) acquiring and maintaining the information necessary to construct benchmark indices and construct notional portfolios for policy development and reporting purposes;
  - (g) evaluating the performance of external fund managers appointed to age the Ghana Petroleum Funds' investments;
  - (h) supplying information to the Minister and the Investment Advisory Committee necessary for the drafting of reports and statements relevant to the management of the Ghana Petroleum Funds, including all reports relating to the management of the Petroleum Account and the Ghana Petroleum Funds required by law, with all such information being available to the recipients at least fifteen working days prior to any legislated publication date unless otherwise agreed between the parties;
  - (i) meeting all the operational expenses relating to the management of the Ghana Petroleum Funds, which shall be compensated for from the annual management fee as established in the Operations Management Agreement;
  - (j) implementing systems, procedures risk management practices, and development of human resources to minimize the risk of operational loss to the Ghana Petroleum Funds;
  - (k) advising the Minister of all significant events affecting the value of the Ghana Petroleum Funds and other matters considered to be urgent or of importance relating to the management of the Fund;
  - (l) providing the members of the public with such information concerning the Ghana Petroleum Funds as required by the law; and
  - (m) assisting the Investment Advisory Committee in the preparation of the Annual Report of the Ghana Petroleum Funds;

4. The Central Bank shall implement the operational management of the Ghana Petroleum Funds through the adoption of the following principles:

- (a) the assets of the Ghana Petroleum Funds shall be maintained in the name of the Central Bank, but shall at all times be segregated from the assets of the Central Bank in such a manner as shall allow the beneficial ownership of the assets and the income associated with those assets to be clearly determined at any time;

- (b)* the books and records of the Ghana Petroleum Funds shall be maintained separately from the books and records of the Central Bank to the maximum extent practicable;
- (c)* the Central Bank shall make the books and records relating to the operational management of the Ghana Petroleum Funds available at any time on request to the Minister, staff authorised in writing by the Minister, and the auditors of the Ghana Petroleum Funds; and
- (d)* the Central Bank shall ensure that all staff associated with the management of the Ghana Petroleum Funds shall be bound by a code of ethics and rules to avoid conflicts of interest.

**5.** The Central Bank shall be permitted to invest only in the qualifying instruments described in Section 29 of the Ghana Petroleum Revenue Management Act.

**6.** The performance of the Ghana Petroleum Funds shall be measured periodically against the benchmark developed by the Investment Advisory Committee and will be the subject of periodic reports.

**7.** The Minister shall give the Central Bank at least four weeks' written notice before implementing any change to the mandate or benchmark, and the Central Bank shall advise the Minister as to the anticipated length of time it will take to effect the new requirements.

**8.** The remuneration of the Central Bank shall be as recommended by the Minister, and shall be payable in monthly installments from the assets of the Ghana Petroleum Funds.

**9.** The Central Bank shall undertake the appointment of portfolio managers, under the following conditions:

- (a)* the Central Bank shall undertake the procurement process in a fair and transparent manner according to its internal procedures and relevant laws of Ghana;
- (b)* the Central Bank shall provide a report to the Minister on the appointment of Fund Managers detailing the services to be provided, the proposed level of fees, the proposed benchmark, the levels of insurance cover against exposures, and such information concerning the procurement process as is necessary to inform the Minister that the process was undertaken in accordance with the relevant Public Procurement laws of Ghana; and
- (c)* the Central Bank shall enter into a contract with a Fund Manager in its own name.

**10.** Where Central Bank wishes to terminate the contract of a Fund Manager, the Central Bank shall consult with the Minister as follows:

- (a)* the Central Bank shall provide a written report to the Minister on the termination of a portfolio manager's contract, with copy to the Chairman of the Investment Advisory Committee;
- (b)* the Central Bank shall define the grounds for termination of a Fund Manager in the Investment Guidelines; and

(c) the Minister may, within five working days of receiving the recommendation, seek the advice of the Advisory Committee concerning the proposed termination of a Fund Manager's contract.

11. The Central Bank shall not be liable for losses arising from the operations of the Ghana Petroleum Funds unless such losses arise from the negligence of the Central Bank or its employees.

12. The Minister shall provide to the Central Bank, at least five working days' notice of written payment instructions to transfer amounts from the Ghana Petroleum Funds to the Consolidated Fund that shall include the following information:

- (a) the amount or amounts to be transferred;
- (b) the date or dates on which the transfer(s) are to take place;
- (c) the parliamentary appropriation under which the transfer is authorised;
- (d) a statement that the provisions of Sections 10 to 12 of the Law have been complied with, including supporting documentary evidence as may be relevant; and
- (e) the signature of the Minister;

13. This agreement may be amended by the Parties at anytime, provided that the amendments shall not be effective except in writing and signed by both Parties.

14. The Minister shall at the Central Bank's request delay the publication of amendments to this Agreement concerning changes in portfolio allocations, benchmarks or other aspects that may affect the value of the Ghana Petroleum Funds until the Central Bank has substantially completed the related market operations.

15. The Minister may propose changes to this Agreement on the basis of advice received from the Investment Advisory Committee after it is established.

## MEMORANDUM

The purpose of this Bill is to provide for a framework that will guide the efficient collection, allocation, and management of petroleum revenue for the benefit of current and future generations of Ghanaians and also to ensure that the overall management of petroleum revenue is based on sound, sustainable fiscal policies that transcend political regimes.

The Bill is also to provide clear assignment of responsibilities from collection to final utilisation of petroleum revenue within a transparent and accountable framework.

Unique challenges are presented by the petroleum sector. Global experience is that proper and responsible management of petroleum revenue is essential to deliver the best possible future for Ghanaians. The efficient and effective management of petroleum revenues is critical for national development.

Petroleum revenue management legislation is necessary if Ghana is to avoid the costs associated with the alternative options of leaving the revenue to be collected and accounted for as part of conventional revenue, or in the hands of the national oil company. The lessons

from oil-producing countries are that these options for the collection and management of petroleum revenue risk excessive waste, potential loss of control of public expenditure, and most importantly, weaken the purpose of the national budget as the primary instrument to manage all the resources of this country. Most oil-producing countries have therefore seen it fit to put in place a legislative framework to guide the collection, use and management of their petroleum revenue. International best practice is that the revenue management law should be simple, transparent, and flexible yet rules-based with the view to ensure greater fiscal discipline.

Regular revenue management audits as well as the regular publication of receipts and disbursements and the performance of what is set aside as savings and investment are a necessary part of the fiscal discipline. Other objectives of this Bill include the provision for clear oversight mechanisms, auditing, transparency and reporting obligations to safeguard a wise management of petroleum revenue.

The Bill also establishes Petroleum Funds made up of the Heritage Fund and the Stabilisation Fund. The Heritage Fund is an ‘endowment’ intended to safeguard the long-term interest of Ghanaians and to sustain a reasonable level of development even after all the oil and gas resources have been exhausted. The Stabilisation Fund, or a rainy-day-fund, is intended to ensure a stable level of budgetary support from the petroleum revenue and in so doing, help to manage the potential short-term adverse effects on the economy of fluctuations in oil prices. The investment guidelines that funds are to be invested abroad in qualifying instruments, are intended to safeguard the integrity of the fund management. They also underscore the important fact that except for stabilisation purposes, what is set aside for long-term savings is not to be seen as “development funds”, but rather as endowment for the future.

The effective management of petroleum revenue is critical for the development of the nation. The Bill envisages that a long-term national development plan will be in place and be implemented through successive medium-term expenditure frameworks aligned with annual budgets. The petroleum revenue must be integrated into the budget within a long-term fiscal and monetary policy framework that ensures that government spending of petroleum revenue takes into account the economy’s absorptive capacity, the investment needs of the non-oil sector of the economy, as well as the need to sustain macroeconomic stability.

It is necessary to ensure that the spending of petroleum revenue enhances the productive capacity and productivity of the non-oil sector. The efficient planning and execution of the national budget are therefore key to the sound management and transformation of petroleum wealth into meaningful development. They will also ensure the quality of spending matters and the sustainability of sound fiscal policies across different political regimes.

For purposes of tracking and transparency, petroleum revenue due to the State is to be directed into a transitory Petroleum Account held and managed by the Bank of Ghana.

In line with international best practice, the Bill sets out clear quantitative rules to guide the transparent movement of petroleum receipts from the Petroleum Account to the national budget and into and out of the Heritage and Stabilisation Funds. It allocates savings between the two Funds in a way that puts immediate emphasis on the need to ensure smooth and effective budget implementation. It makes provisions for withdrawals to

support budget implementation in the event of shortfalls, but puts a ceiling on the amount that can be withdrawn in order to enhance fiscal discipline. It incorporates checks and balances and provisions to ensure the highest level of transparency and accountability in the management of the country's petroleum resource money.

*Clause 1 to 6* deals with preliminary matters while *clause 7 to 9* provides for other petroleum receipts. Allocations and disbursements are provided for in *clause 10 to 25*. *Clause 26 to 30* deals with the management and investment of Ghana Petroleum Funds. The provisions for the Investment Advisory Committee are in *clause 31 to 42* and *clause 43* deals with encumbrances, auditing and reporting. *Clause 44 to 50* deals with the audit of the petroleum reserves accounts. *Clause 51 to 60* provides for accountability, transparency and public oversight and *clause 61 to 64* deals with miscellaneous matters.

*Clause 1* is on application and states that the Act is to regulate the collection, allocation and management by government of petroleum revenue.

*Clause 2* establishes the Petroleum Account to be held at the Bank of Ghana to receive and disburse petroleum revenue due to the Republic and derived from upstream and midstream petroleum activity.

*Clause 3* provides for payment into the Petroleum Account and assigns the responsibility for the assessment, collection, and accounting to the Ghana Revenue Authority and specifies that petroleum revenue is not to be treated as part of the normal tax revenue pool for purposes anticipated in relevant laws.

*Clause 4* deals with the form of petroleum payment, specifically when payment is made in petroleum instead of cash.

*Clause 5* prohibits the use of the Petroleum Account for the provision of credit to the government, public agencies, and private sector entities, and adds that there is not to be borrowing against proven petroleum reserves.

*Clause 6* provides for petroleum account receipts. These include royalties from oil and gas, additional oil entitlement, initial carried interest from petroleum operations and other receipts from petroleum such as prospecting, exploration for, development, exploitation, transportation and the sale or export of petroleum.

*Clause 7* specifies that revenue due to the Republic's equity share is to be paid directly into the Petroleum Account to ensure a high degree of transparency and tracking of petroleum revenue. The national oil company's claims for capitalisation, operational and other direct expenditures is to be incorporated into the national budget process, making its investment and operational plans subject to the scrutiny of Parliament.

For the purpose of transparency and accountability *clause 8* provides for the publication of all petroleum receipts into the Petroleum Account on quarterly basis in the *Gazette* and in at least two national daily newspapers.

*Clause 9* provides for the management of petroleum reserve accounts expenses. The Bank of Ghana is to deduct reasonable management expenses from the petroleum receipts of the Petroleum Revenue Account by direct debit.

*Clause 10* establishes the Ghana Stabilisation Fund to cushion the impact on or sustain public expenditure capacity during periods of revenue shortfalls caused by a fall in the petroleum price or through production changes.

*Clause 11* establishes the Ghana Heritage Fund to use part of the savings as investment to generate an alternative stream of income to support public expenditure in the future.

For ease of reference, the Ghana Heritage Fund and the Ghana Stabilisation Fund are collectively designated as Ghana Petroleum Funds in *clause 12* and the inflows into the Funds are to be from the Petroleum Account.

*Clause 13* provides for withdrawals from the Ghana Stabilisation Fund and *clause 14* provides for withdrawals from the Ghana Heritage Fund.

*Clause 15* deals with matters of finality of payment into the Petroleum Account or into the Petroleum Funds.

*Clause 16* requires that there be annual reconciliations and adjustments for receipts and transfers in and out of the Petroleum Account and the Ghana Petroleum Funds.

*Clause 17* defines the three types of disbursements permitted from the Petroleum Account; these are disbursements for budget support into the Consolidated Fund, disbursements into the Ghana Petroleum Funds for savings and exceptional disbursements permitted under the Act.

*Clauses 18* and *19* define the steps to follow to determine how much of the current petroleum revenues are to be allocated for current budget spending. *Clause 18* instructs the Minister responsible for Finance to determine the Benchmark Revenue, that is, the expected revenue from petroleum operations based on some price and quantity forecasts for the forthcoming fiscal year by September 1<sup>st</sup> using the procedure defined in the First Schedule.

Given the Benchmark Revenue, *clause 19* outlines the steps to be taken to decide on what percentage of it should be allocated to the budget for current spending. The exact percentage is to be determined on year-to-year basis to allow for flexibility, but the percentage is to be within a prescribed range, which itself is subject to change every three years. The choice of the spending percentage and the review of the spending range are intended to take into account the need for some flexibility in making fiscal choices, taking into account the development needs and the absorptive capacity of the economy, as well as the need to maintain macroeconomic stability.

*Clauses 20* and *21* define the rules and guidelines for the transfer of petroleum revenues into the Consolidated Fund for the periods when there is active petroleum production and when petroleum production ceases. When petroleum production ceases, the Ghana Heritage Fund and the Ghana Stabilisation Fund are to be consolidated into a single Ghana Petroleum Fund and the rules for withdrawal are to follow international best practice.

*Clause 22* anticipates that a national development plan will be in place to guide medium-term planning and annual budgeting. The allocation of the annual budget funding amount is to ensure a fair distribution of the national wealth among citizens, equality among citizens and be in line with a long-term national development plan. *Clause 22* also identifies broad areas of spending priorities, identified through a nation-wide survey, in the event that a long-term national development plan is not in place.

*Clause 23* prohibits earmarking of petroleum revenues for any special considerations.



*Clause 24* is on transfers from the Petroleum Account which are to be made to the Ghana Petroleum Funds beginning in the year 2011. Transfers are based on the excess of petroleum revenues collected over the amount needed to support the budget. In the short to medium term, thirty percent of the excess is allocated to the Ghana Heritage Fund whilst the balance is allocated to the Ghana Stabilisation Fund to protect the integrity of the budget.

*Clause 25* allows for exceptional transfers out of the Petroleum Account. The clause also anticipates petroleum operations on land and provides for compensation and appropriate royalty payments in line with relevant laws.

*Clause 26 to 30* deals with the overall management and investment of the Ghana Petroleum Funds. *Clause 26* deals with the management obligations of the Minister. The Minister is enjoined to oversee the collection, disbursement and overall management of the Petroleum Account and the Ghana Petroleum Funds. The Minister however, is not to take any decision in relation to the investment strategy or management of the Ghana Petroleum Funds without first seeking the advice of the Investment Advisory Committee and the Bank of Ghana.

*Clause 27* provides for the management obligations of the Bank of Ghana. The Bank of Ghana is to see to the day-to-day operational management of the Ghana Petroleum Funds.

*Clause 28* deals with investment rules and states that amounts in the Ghana Stabilisation Fund and the Ghana Heritage Fund are to be invested in the qualifying instruments defined in *clause 29*.

*Clause 29* deals with qualifying financial instruments abroad for the investment of the savings held in the Ghana Petroleum Funds, which are debt instruments denominated in internationally convertible currency that bear interest or a fixed amount equivalent to interest of an investment grade security. Investment in derivative instrument is permitted but only to the extent that its acquisition reduces the financial exposure to the risks associated with the underlying instrument.

*Clause 30* deals with Bank of Ghana reporting on the performance of the Ghana Petroleum Funds on quarterly basis. It also requires the Bank to publish the semi-annual reports on its website.

*Clause 31* establishes an Investment Advisory Committee to advise the Minister and to monitor the performance and management of the Ghana Petroleum Funds on behalf of the Minister. The Advisory Committee will not be involved in any way in the day-to-day operations or management of the Funds.

*Clause 32* states the functions of the Advisory Committee as the development of performance benchmarks of desired returns from and appropriate risks of the investments of the Ghana Petroleum Funds for the Minister. Others are to advise the Minister on the investment instructions to be provided by the Minister to the Bank of Ghana for the operational management of the Ghana Petroleum Funds, to review reports and audits and generally to monitor the performance of the Ghana Petroleum Funds.

The Advisory Committee in performing these roles is to take cognisance of international best practices and the prudential standards used by the Bank of Ghana for investments of similar nature. The latter provision is necessary to ensure that the advice

given to the Minister on investment guidelines and performance measurement is not at variance with the Bank of Ghana's prudential standards which may create conflict.

The Advisory Committee in performing its functions is also to take into account the overall purpose for which the Ghana Petroleum Funds have been established. These are the economic conditions and the constraints in investment markets as well as the need to ensure that sufficient liquid funds are available when needed for transfers to meet unanticipated petroleum revenue shortfalls.

*Clauses 33, 34 and 35* deal with the appointment of members of the Advisory Committee, the tenure of office of members, and the meetings of the Advisory Committee.

*Clause 36* is on disclosure of interest whilst *clause 37* provides for publication of the membership of the Advisory Committee in the *Gazette*. The *Gazette* publication is to be updated each time that the membership of the Advisory Committee changes.

*Clauses 38 and 39* are on allowances and the secretariat of the Advisory Committee respectively.

*Clause 40* is on the absence of advice from the Advisory Committee and states that where the Advisory Committee does not provide advice to the Minister within fifteen days after a request or within a shorter period determined by the Minister, taking into account the nature of the advice sought, this is not to impede the Minister from taking a decision in consultation with the Governor of the Bank of Ghana.

*Clause 41* states that the Minister is to provide Parliament with the advice given by the Advisory Committee without delay upon request by Parliament.

*Clause 42* provides that the Investment Advisory Committee is required to submit quarterly information reports and analysis on the performance of the Ghana Petroleum Funds to the Minister. The clause further enjoins the Advisory Committee to report to the Minister on performance and activities of the Ghana Petroleum Funds for purposes of reporting in the annual budget.

*Clause 43* is on encumbrances on the assets of the Ghana Petroleum Funds. The amounts in the Ghana Petroleum Funds are to remain the property of the Republic and a contract, agreement or arrangement which purports to encumber the assets of the Ghana Petroleum Funds by way of guarantee, security, mortgage or any other form of encumbrance is contrary to the Act and is void.

*Clauses 44 and 45* deal with the declaration of the Petroleum Account and the Ghana Petroleum Funds as part of the public funds of Ghana in line with the Financial Administration Act, 2003 (Act 654) and enjoin the Bank of Ghana to keep proper books of accounts and records.

*Clause 46 to 49* deals with internal audit, external audit, annual audit and special audits to be carried out quarterly and annually.

*Clause 50* deals with the annual report to be submitted by the Minister to Parliament as part of the annual presentation of the Budget Statement and Economic Policies. The clause prescribes the information for the report, including audited financial statements certified by an independent auditor. Other information includes a report signed by the Minister describing the activities of the Petroleum Funds in the fiscal year of the report and the

advice of the Advisory Committee. It is also to include comparisons of income derived from the Petroleum Funds over the previous two years, the liabilities of government borrowings in order to give a true representation of government's net financial assets and the rate of savings. The list of names of persons holding positions relevant to the operations of the Petroleum Funds are also to be included.

The Bill makes great effort to respond to the need for accountability and transparency. *Clause 51 to 59* deals with matters of transparency and accountability as well as public interest. The clauses entrench transparency as a fundamental principle, define the scope of confidentiality and finally establish the Public Interest and Accountability Committee.

*Clause 51* provides that the management of the petroleum revenues and the savings are to be carried out with the highest internationally accepted standards of transparency and good governance.

*Clause 52* deals with non-compliance with an obligation to publicise information. *Clause 53* establishes a Public Interest and Accountability Committee while *clause 54* states the objects of the Accountability Committee.

*Clause 55* provides the functions of the Public Interest and Accountability Committee and *clause 56* is on the membership of the Accountability Committee. The Committee is to have eleven members comprising two nominated to represent policy research think-tanks and civil society and a representative each nominated by the Trade Union Congress, the National House of Chiefs, Association of Queen Mothers and Association of Ghana Industries. Others nominees will come from the Ghana Journalists Association, Ghana Bar Association, Institute of Chartered Accountants, Ghana Extractive Industries Transparency Initiative, and Academia.

*Clause 57* is on the tenure of members and eligibility for appointment to the Accountability Committee. *Clause 58* deals with reporting by the Accountability Committee.

*Clause 59* deals with allowances for members of the Accountability Committee.

*Clause 60 to 64* deals with miscellaneous matters and provides for the transparency and accountability of petroleum receipts. *Clause 61* provides the penalties for contravention of the Bill while *clause 62* is on transitional and final provisions. *Clause 63* empowers the Minister for Finance to make Regulations for the effective carrying out of the provisions of this Act. Finally, *clause 64* is on interpretation.

DR. KWABENA DUFFUOR  
*Minister for Finance and Economic Planning*

Date: *12th July, 2010.*