

# **Ghana Petroleum Revenue Management**

## **Proposal**

**Ministry of Finance and Economic Planning  
P. O. Box M40  
Accra, Ghana**

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## **DISCLAIMER**

**This is not a Draft Bill**

**WORKING DRAFT:-Not-for-Citation**

**The Ministry of Finance and Economic Planning has been tasked to lead the preparation of the Ghana's oil revenue and management law. A preliminary version of the proposals was posted online to solicit inputs. This latest version of the proposal has benefitted immensely from the public feedback. This version also reflects the results of the nation-wide public consultations held and survey questionnaire administered between February 24 and March 21, 2010, and it is made available again for your comments before submission to Cabinet.**

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## **Part I – General Provisions**

### **General Provisions**

#### ***1. Citation***

- (1) This Act may be cited as the Petroleum Revenue Management Act.
- (2) This Act sets forth the framework under which petroleum revenues in the Republic of Ghana shall be collected, allocated and managed with responsibility, transparency, and accountability for the benefit of all citizens in accordance with Article 71 of the Constitution.

#### ***Scope***

This Act shall regulate the collection, allocation, and management of all Petroleum Revenues derived from upstream and midstream petroleum activities in the jurisdiction of the Republic of Ghana. It establishes the Ghana Petroleum Account and the Ghana Petroleum Funds, which collectively shall be referred to as the Ghana Petroleum Reserves Accounts.

#### ***Conflicts***

Where there is conflict between the provisions of this Act and any other Act or Regulations on the national budget and public financial management, or between the provisions of this Act and the terms of a petroleum authorization, the provisions of this Act shall prevail.

## **Part 2 – The Ghana Petroleum Reserves Accounts**

### **Establishment and Objectives of Petroleum Reserves Accounts**

2. (1) There is hereby established the Ghana Petroleum Account, the Ghana Heritage Fund and the Ghana Stabilization Fund. The Ghana Heritage Fund and the Ghana Stabilization Fund collectively shall be referred to as the Ghana Petroleum Funds.
- (2) The Ghana Petroleum Account shall be a designated collection account at the Central Bank for the sole purpose of receiving all petroleum revenues due to the State.
- (3) The Ghana Petroleum Funds shall be for the sole purposes of saving and investing part of the petroleum revenues and shall be denominated in any convertible currency approved by the Minister.

- (4) The assets of the Ghana Heritage Fund shall be used to
  - (a) generate alternate stream of income to support public expenditure in the long run.
  - (b) provide a heritage for future generations of citizens from savings derived from excess revenue.
  
- (5) The assets of the Ghana Stabilization Fund shall be used to:
  - (a) cushion the impact on or sustain public expenditure capacity during periods of revenue shortfalls whether caused by a fall in prices of petroleum, or through production changes.
  - (b) cushion the economy from the impact of unanticipated petroleum revenue shocks and safeguard macroeconomic stability.

### **Prohibited Use of Petroleum Reserves Accounts**

- 3. (1) The assets of the Ghana Petroleum Reserve Accounts shall neither be used to provide credit to government, public enterprises, private sector entities, or to any other person or entity, nor as collateral for debts (commitments and guarantees) or other liabilities of any entity.
- (2) There shall be no borrowing against the petroleum reserves.

### **Ghana Petroleum Account Receipts**

- 6. (1) The following shall form Ghana Petroleum Account gross receipts:
  - (a) royalties from oil and gas, all additional oil entitlements, surface rentals, initial carried interest, and any other receipts from any petroleum operations including, prospecting or exploration for, and development, exploitation, transportation, sale or export of petroleum;
  - (b) any amount received from direct or indirect participation of Government in Petroleum Operations;
  - (c) corporate income taxes from all upstream and midstream petroleum companies;
  - (d) any amount received by Government from the investment of petroleum funds;
  - (e) any amount received by Government directly or indirectly from petroleum resources not covered in paragraphs (a) to (d) above, including capital gains tax derived from the sale of ownership of exploration, development and production rights.

## **Other Receipts**

7. (1) In the event that the Government participates in petroleum operations indirectly, through a National Oil Company, the receipts of the Ghana Petroleum Account shall include the following:
- (a) any amount payable by the National Oil Company as tax, royalty or any other due in accordance with Ghanaian law; and
  - (b) Dividends from the National Oil Company for Government's equity interest.

## **Initial Carried Interest and Participating Interest**

8. (1) (a) The National Oil Company shall receive a share of the initial carried interest revenues from petroleum operations as direct operating revenue.
- (b) The share of allocation shall be subject to periodic review, having regard to the capacity and needs of the National Oil Company to carry out its mandate.
- (2) The National Oil Company shall receive all or part of the additional participating interest revenues which shall be a paying interest as direct operating revenue, taking into account how the paying interest is financed.
- (3) The provisions of subsections 8(1) and 8(2) shall be subject to Parliamentary approval on the recommendations of the Minister.

## **Collection and Form of Petroleum Receipts**

9. (1) Notwithstanding any provisions contrary in any regulations, agreements or enactment in existence before the coming into force of this Act, all petroleum revenues due to Government from whatever source derived in or outside Ghana, shall be assessed and accounted for by the Ghana Revenue Authority.
- (2) All petroleum revenue assessed as due in each month shall be paid directly by electronic transfer into the Ghana Petroleum Account by the 15<sup>th</sup> day of the ensuing month by the entities liable to make such 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.

- (4) The Minister, in consultation with the Board of Directors of the Ghana Revenue Authority shall provide for the Ghana Revenue Authority a fixed collection expense as a charge on the Ghana Petroleum Account. The charge shall be reported in financial statements required under this Act.
- (5) (a) Where payments are made in petroleum in lieu of cash, the U.S. dollar the cash equivalent on the date of receipt of the crude petroleum shall be reported to and recognized as such by the Ghana Revenue Authority.
- (b) The proceeds of the sale of the crude oil or natural gas shall be credited to the Ghana Petroleum Account within *forty-five (45)* calendar days after the receipt of the crude petroleum.
- (d) The allowable marketing cost shall be reimbursed to National Oil Company as approved by the Minister as a charge on the Ghana Petroleum Account.
- (e) Where payments are made in crude oil or natural gas, the currency equivalent valued on the date of receipt shall be shown for the purposes of all reporting as an asset of the Ghana Petroleum Account until payment has been effected.
- (6) For purposes of this Act, petroleum revenues paid into the Ghana Petroleum Account shall not be considered as part of the normal tax revenue pool for purposes anticipated in relevant laws of Ghana, and as such, the Revenue Agencies (Ghana Revenue Authority Act, 2009, (Act 791) as well as the determination of any statutory earmark funds shall not apply.

### **Petroleum Quantity Assessment Body**

10. (1) The Minister shall appoint a Petroleum Quantity Assessment Body to determine the basis of royalty and any other payments due to the Republic.
- (2) The appointment shall be made in consultation with the relevant institutions.

### **Membership of the Petroleum Quantity Assessment Body**

11. The following shall comprise the Petroleum Quantity Assessment Body representatives:
- a. The National Oil Company,
  - b. The Regulator of petroleum operations,

- c. The Ministry of Energy,
- d. The Ghana Revenue Authority
- e. Any other person that the Minister shall determine.

### ***Functions of the Petroleum Quantity Assessment Body***

12. (1) To verify the quantity of petroleum produced without prejudice to any other institution that has oversight powers over petroleum activities.
- (2) Submit a written reconciliation statement to the Minister and the sector Minister of the actual production of oil and gas with the production estimates of the operator at the end of the month following each quarter.

### **Transparency and Accountability of Petroleum Receipts**

13. (1) For the purpose of transparency and accountability, all records of petroleum payments or receipts, in whatever form, shall simultaneously be published by the Minister in the **Ghanaian Gazette and in two national daily newspapers**, no more than 30 working days after the end of the applicable quarter and this shall be on individual company payment basis.
- (2) All information required to be made public shall also be published online on the websites of the Ministry responsible for Finance and the Parliament of Ghana effective the publication date.

### **Management Expenses of Ghana Petroleum Reserve Accounts**

14. The Bank of Ghana shall be entitled to deduct, by direct debit of the Ghana Petroleum Account, reasonable management expenses in accordance with best international practices, as provided for in the Operations Management Agreement. The charge shall be reported in financial statements required under this Act.

## **Part 3**

### **Disbursements from the Ghana Petroleum Account**

15. (1) Disbursement from the Ghana Petroleum Account shall only be made
- (a) for fixed collection expenses;
  - (b) for management expenses of the Petroleum Reserve Accounts; and
  - (c) to the national budget and the Petroleum Funds.

- (2) No later than September 1<sup>st</sup> of each year, the Minister shall determine
  - (a) the benchmark revenue using the formula set out in the First Schedule; and
  - (b) the estimated sustainable income according to the formula set out in the Second Schedule.
- (3) For the year 2010, the annual budget funding amount, the amount of petroleum revenue to support the budget shall be what the Minister recommends out of the 2010 petroleum receipts, if any.
- (4) For the period 2011 to the year when there shall be no more petroleum production, the annual budget funding amount from petroleum revenues shall not exceed *seventy-five percent (75%)* of the benchmark revenue as calculated and certified according to the First Schedule.
- (5) From the year marking the end of crude petroleum production, the annual budget funding amount from petroleum resources shall be equal to
  - (a) the sum of royalties from gas operations, if any, corporate income tax on gas commercialisation, dividends from the National Oil Company and the real income or earnings on the Petroleum Funds.Or
  - (b) such amounts as Parliament by two-thirds majority vote may determine taking into account the overall consideration of the Funds, the opportunities for investments, the prevailing economic conditions, and the demand for demographic related spending.
- (6) The real income or earnings on the Ghana Petroleum Funds shall be equivalent to the real rate of return on the balance of the Petroleum Funds on December 31 of the previous fiscal year as calculated by the Bank of Ghana and certified by the Investment Management Committee.

## **Transfers from the Petroleum Account**

14. (1) Transfer from the Ghana Petroleum Account to the Consolidated Fund for national budget funding shall be in quarterly installment of one-quarter of the annual budget funding amount or as the Minister may recommend.
- (2) The total amount withdrawn from the Ghana Petroleum Account for budget funding shall not exceed the appropriation amount approved by Parliament for that fiscal year.
- (3) Transfers from the Ghana Petroleum Account by the Bank of Ghana in any fiscal year shall only take place after publication of the budget in the *Gazette* confirming the appropriation amount approved by Parliament for that fiscal year.
- (4) The key decision parameters in the formulas in the First and Second Schedule shall be reviewed *every three years* with the first review to occur in 2014.
- (5) The review shall be conducted by the Minister in consultation with the Bank of Ghana and the Investment Management Committee.
- (6) 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 in Excess of the Annual Budget Funding Amount**

15. Transfers in excess of the annual budget funding amount shall be subject to Parliamentary approval and require that the Government provides to Parliament:
- (1) A report describing the use of the annual budget funding amount in the preceding fiscal year.
  - (2) A detailed explanation of why it is in the long-term interests of Ghanaians to transfer from the Petroleum Account an amount in excess of the annual budget funding amount as determined in the First Schedule.
  - (3) A report estimating the amount by which the budget support amount for the fiscal years immediately following the fiscal year from which the excess transfer is made will be reduced as a result of the transfer.
  - (4) A detailed explanation of the impact of the transfer on the Petroleum Funds and on the Estimated Sustainable Income according to the Second Schedule.

- (5) A detailed report on the trends in non-oil domestic tax revenue for the preceding two fiscal years and the measures to be taken to enhance revenue mobilization.

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

16. (1) All petroleum revenues, their uses and expenditure items shall be part of the national budget and shall be subject to the same budgetary processes that are necessary to ensure efficient monitoring of such uses.

(2) The allocation of the Annual Budget Funding Amount shall be to ensure a fair distribution of the national wealth, equality among citizens, and shall be in line with a long-term national development plan, and the Government's overall development strategy as approved by Parliament.

(3) Should a national development plan not be in place, the allocation within the budget should give priority to:

- (a) agriculture and agro-business
- (b) human resource development in education and health
- (c) physical infrastructure in education and health
- (d) water and sanitation
- (e) road and rail infrastructure
- (f) rural development,
- (g) the strengthening of the State's institutional capacity in governance, maintaining law and order, and enhancing public safety and security;
- (h) alternative energy sources,
- (i) Environment, forest management and protection of water bodies.

(4) For any fiscal year, a minimum of *seventy (70) percent* of the annual budget funding amount shall be directed towards public investment expenditures consistent with subsection (3), and with the view to accelerate growth and job creation, human development and basic services, and to enhance good governance and civic responsibility.

### **Block Grants**

17. (1) Socio-economic and environment related mitigating activities in communities negatively impacted by petroleum operations shall be financed through the use of Block Grants.

(2) The expenditures and uses of Block Grants shall take into account the need to promote the socio-economic development of affected communities, and safeguard the environment.

(3) Block Grant allocation may also be used to finance targeted small and medium scale interventions, as defined by the Minister,

(i) to promote the development of the non-oil sector of the national economy or

(ii) in deprived regions of the nation to ensure a fair distribution of the national wealth

(4) The Minister, in consultation with relevant authorities, shall establish criteria for expert assessment of needs, the eligibility criteria, and the implementation, reporting and monitoring guidelines for Block Grant supported activities.

(5) Block Grants financing activities shall be prepared in coordination with and on consistent basis as part of the national budget.

(6) Block Grants shall be on established and approved needs basis, shall be time limited, and may be renewable.

(7) For any fiscal year, total Block Grants allocation shall not exceed *five percent (5%)* of the Annual Budget Funding Amount.

(8) Without prejudice to the Financial Administration Act, 2003, Act 654 or as amended, the balance of appropriation of Block Grant financed mitigating activities shall remain unexpended and carried forward as available to finance their discharge. Such moneys shall be included in the estimates of the new financial year to be presented for approval of Parliament.

### **Statutory Earmarking**

18. Despite sections 17 and 18 statutory earmarking of petroleum revenues for any special considerations is prohibited.

### **Transfers for Exceptional Purposes**

19. (1) If transfers from the Ghana Petroleum Account are permitted for purposes of refund of tax in the event of overpayment of tax, the transfer amount shall represent a reduction of the Ghana Petroleum Account receipts, and shall not be

considered as part of the allowable transfer under the Appropriation Act, 2003 (Act 643).

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

### **Transfers to the Ghana Petroleum Funds**

20. Commencing in the year 2011 the following rule shall apply. Where petroleum revenue collected in each quarter of any financial year exceed *one-quarter* of the estimated Annual Budget Funding Amount of the financial year, as determined by the First Schedule:-

(1) by more than *five percent (5%)*, the United States Dollar equivalent of all the excess revenue collected shall be transferred from the Ghana Petroleum Account into the Ghana Petroleum Funds.

(2) by not more than *five percent (5%)*, the Minister may direct that the United States Dollar equivalent of *all or part* of the excess revenue collected be transferred from the Ghana Petroleum Account into the Ghana Petroleum Funds.

(3) (a) A minimum of *seventy percent (70%)* of the aggregate of the excess revenue shall be transferred into the Ghana Heritage Fund and the balance shall be transferred into the Ghana Stabilization Fund each year.

(b) The accumulated resources or the optimal size of the Stabilization Fund shall not exceed a predetermined amount as recommended by the Minister and approved by Parliament, and such an amount shall be reviewed from time to time.

(c) Once the optimal size is attained, subsequent transfers into the Stabilization Fund may be earmarked for debt reduction, as additional transfers into the Heritage Fund, or other investment uses as the Minister may recommend and approved by Parliament.

(4) The transfer and any subsequent transfers shall be made no later than the end of the month following the quarter in respect of which the excess revenue was calculated.

## **Withdrawals from the Ghana Stabilization Fund**

21. (1) Where petroleum revenues collected in the first two quarters fall below one-half of the estimated Annual Budget Funding Amount for that financial year by at *least ten percent (10%)*, withdrawals may be made from the Ghana Stabilization Fund as follows, whichever is the lesser amount:
- a. either seventy-five (75) percent of the estimated shortfall of Petroleum Revenue for that year; or*
  - b. thirty (30) percent of the balance standing to the credit of the Ghana Stabilization Fund at the beginning of that year.*
- (2) The amount withdrawn shall be deposited into the Consolidated Fund within twenty-four hours of withdrawal.
- (3) Transfers out of the Ghana Stabilization Fund shall only be done for the purpose of alleviating shortfalls in the national revenue and in accordance with subsection (1).
- (4) The real rate of return from the Stabilization Fund shall be treated as part of the current year's petroleum income in the First Schedule in determining the Annual Budget Funding Amount.

## **The Ghana Heritage Fund**

22. (1) Additions to the Ghana Heritage Fund shall be according to the rule specified in Section 20.
- (2) Withdrawals out of the Ghana Heritage Fund shall be according to the Withdrawal Rule specified in Section 15.
- (3) The real rate of return on investment from the Ghana Heritage Fund shall be treated as part of the current year's income in the First Schedule in determining the Annual Budget Funding Amount.

## **Payments into the Ghana Petroleum Funds**

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

## **Adjustments and Reconciliations to Petroleum Reserves Accounts**

25. (1) No later than *February 15<sup>th</sup>* of each year, beginning 2012, the Minister shall reconcile the actual total petroleum receipts and the estimated Annual Budget Funding Amount of the immediately preceding year and shall submit a written report to Parliament after an audit by the Auditor General.

(2) The report shall include the following information:

- (a) The Annual Budget Funding Amount for the immediately preceding two years.
- (b) The estimated sustainable income for the current and immediately preceding two years as calculated according to Second Schedule.
- (c) The actual inflows and outflows of the Ghana Petroleum Account for that year.
- (d) The balance of actual receipts over the Annual Budget Funding Amount.
- (e) Recommendations for the reconciliations and adjustments needed to account for any deviations so that
  - i) The inflows and outflows relating to the Ghana Petroleum Funds match the actuals of the year;
  - ii) The Ghana Petroleum Account balance shall be reset to zero.

(3) The report shall be gazetted and published in the two national dailies no later than March 1<sup>st</sup> of the same year.

## **Part 4: Management and Investment of Ghana Petroleum Funds**

### **Obligations of the Minister and of the Central Bank**

26. Obligations of the Minister and of the Central Bank

(1) Obligations of the Minister

- (a) The Minister shall develop the investment policy for the investment of the Ghana Petroleum Funds.

(b) The Minister shall be responsible for the overall management of the Ghana Petroleum Funds and shall be responsible to oversee the transfers into and disbursements from the Ghana Petroleum Funds..

(c) The Minister shall 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 Management Committee established under Section 25 of this Act, and the Governor.

(d) The Minister shall enter into an Operations Management Agreement with the Bank of Ghana for the operational management of the Ghana Petroleum Funds.

(e) The Operations Management Agreement shall be in form and substance similar to the example set out in Third Schedule of this Act.

(2) Obligations of the Bank of Ghana

(a) The Bank of Ghana shall be responsible for the day-to-day operational management of the Ghana Petroleum Funds under the terms of the Operations Management Agreement.

(b) The Bank of Ghana shall manage the Ghana Petroleum Funds prudently, within the framework of the investment strategy developed by the Investment Management Committee in consultation with the Minister, taking cognizance of established and internationally recognized principles of good governance for the benefit of the Republic of Ghana.

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

27. (1) The Governor shall present to the Minister and to the Investment Management Committee quarterly reports on the performance and activities of the Ghana Petroleum Funds no 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 Petroleum Funds no later than the *15<sup>th</sup> of August and the 15<sup>th</sup> of February* of each year and shall make the report publicly available on its website.

(3) The Governor shall ensure that in releasing, or allowing access to, such reports measures are taken to prevent the disclosure of confidential information.

## Investment Rules

28. (1) Not less than *eighty-five percent (85%)* of the amounts in the Ghana Heritage Fund shall be invested in qualifying instrument prescribed in this Act.

(2) Not more than *fifteen percent (15%)* of the amounts in the Ghana Heritage Fund shall be invested in Economically Targeted Investments, which shall mean investments in strategic sectors of the domestic economy on commercial basis, including investment in food security, irrigation, housing, solar energy and medical research and technology.

(3) Not less than *ninety per cent (90%)* of the amounts in the Ghana Stabilization Fund shall be invested in the qualifying instruments described in this Act.

(4) 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 Management 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 or  
ii) that is issued by or guaranteed by the World Bank or by a sovereign State, other than Ghana, provided 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 Ghana, with a long-term investment grade rating.

(2) The Investment 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, but in any event no later than 10 business days after the change in rating of the instrument or the issuer.

## **Part 5: Investment Management Committee**

### **The Investment Management Committee**

30. For the purposes of advising the Minister and for the general oversight of the management of the Petroleum Funds, there is hereby established an Investment Management Committee referred to in this Act as the ‘Management Committee’.

### ***Functions of the Management Committee***

31. (1) The functions of the Management Committee shall be to:

- (a) Develop for the Minister, benchmark portfolio of desired returns from, and appropriate risks of, the investments of the Ghana Petroleum Funds;
- (b) Advise the Minister on the investment guidelines that the Minister shall provide to the Governor;
- (c) Advise the Minister on the need for changes in the overall investment strategy or management of the Ghana Petroleum Funds, including the making of recommendations as to such changes.
- (d) Manage the portfolio of Economically Strategic Investments on behalf of the Minister, and ensure that all appropriations for the strategic investments are on sound commercial basis and with a high social rate of return; and
- (e) Review reports and audits and generally monitor the performance of the Funds against the benchmark.

(2) Any advice given by the Management Committee on investment strategy or the management of the Ghana Petroleum Funds shall take into account:

- (a) the overall consideration that the Ghana Petroleum Funds are funds of income from the exploitation of nonrenewable petroleum resources and the overall objective that they are for the benefit of current and future generations of Ghanaians;

- (b) the current 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 amounts are available when needed for transfers to meet unanticipated petroleum revenues shortfalls.

(3) The Minister shall seek the advice of and consult with the Management Committee and the Governor before making a decision on any matter relating to the investment strategy or management of the Ghana Petroleum Funds.

### ***Appointment, Tenure, and Remuneration of the Investment Management Committee***

32. (1) The President on the advice of the Minister shall appoint the Investment Management Committee for the Ghana Petroleum Funds.

(2) The Investment Management Committee shall comprise of seven (7) members, to be selected from among persons of proven competence in matters of finance, investment, economics, business management or law, including a senior officer of—

- (a) the Central Bank; and
- (b) the Ministry responsible for finance and/or economic planning

(3) At least one of the members shall be a female.

(4) The President shall appoint a member to be the Chairman of the Management Committee on the advice of the Minister and the Governor.

### ***Tenure of Office of Members***

33. (1) A member of the Management Committee shall be appointed for a term of two (2) or three (3) years for staggered membership of the Management Committee, is eligible for reappointment but not for more than 2 consecutive terms, and shall have security of tenure subject to the provisions of Section 35 of this Act.

(2) In addition to the competencies mentioned in Section 32, each member shall be required to satisfy the criteria for a fit and proper person contemplated in the Banking Act, 2007 Amended.

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

(4) A member who is absent from three consecutive meetings of the Management Committee without sufficient cause ceases to be a member of the Management Committee and shall be replaced forthwith.

(5) The President may by letter addressed to a member revoke the appointment of that member where a member of the Management Committee

(a) is for a sufficient reason, unable to act as a member, or

(b) discloses confidential information

(6) Where there is a vacancy

(a) under subsections (3) or (4) or section 35,

(b) as a result of a declaration under subsection (5), or

(c) by reason of the death of a member

the Minister shall notify the President of the vacancy and the President shall appoint a person to fill the vacancy.

### ***Meetings of the Investment Management Committee***

34. (1) The Management Committee shall meet at least once every two successive months for the performance of its functions or as may be necessary or expedient for the efficient performance of the functions. (2) The chairperson shall at the request in writing by three or more members of the Management Committee convene an extraordinary meeting of the Body within seven (7) days after receipt of the request.

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

(4) The chairperson shall preside at meetings of the Management 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 Management 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 Management Committee may co-opt a person with technical expertise to assist with the performance of its functions. Non-members may not vote on matters before the Management Committee.

### ***Disclosure of interest***

35. (1) A member who has an interest in a matter for consideration by the Management Committee shall

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

(2) Membership ceases if that member has an interest in a matter before the Management Committee and

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

### ***Publication of membership of the Investment Management Committee***

36. (1) The Minister shall cause the names of Members of the Investment Management Committee to be published in the *Gazette*.

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

### ***Allowances***

37. Members of the Management Committee shall be paid allowances as shall be determined by the Minister and approved by Parliament.

### ***Secretariat of the Investment Management Committee***

38. The Ministry of Finance and Economic Planning shall provide the secretariat for the Investment Management Committee and any other administrative support required by the Management Committee for the performance of its functions.

### ***Absence of advice from the Investment Management Committee***

39. (1) Where the Management Committee does not provide advice to the Minister within fifteen days after the 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.

- (a) The Minister shall not be prevented from taking an urgent investment decision in consultation with the Governor of the Bank of Ghana where there is insufficient time to seek the advice of the Management Committee in relation to a particular decision.
- (b) Where the Minister takes a decision without the advice of the Investment Management Committee, the Minister shall report the decision to the Management Committee in writing within forty-eight hours after taking the decision.
- (c) The Minister shall re-examine the decision and take the necessary follow-up action having regard to any subsequent advice provided by the Investment Management Committee.

### ***Release of the advice of the Investment Management Committee***

40. (1) The Minister shall provide Parliament with any advice given by the Management Committee without delay upon request by Parliament.

(2) The Minister shall ensure that in releasing, or allowing access to the advice, measures are taken to prevent the disclosure of confidential information.

### ***Oversight of the Petroleum Funds Accounts and Records***

41. (1) The chairperson of the Management Committee shall oversee the maintenance of the Ghana Petroleum Funds' accounts and records in accordance with accepted current International Accounting Standards to reflect the operations and financial condition of the Ghana Petroleum Funds.

(2) The chairperson of the Management Committee shall submit quarterly management information reports and analyses on the performance and activities of the Ghana Petroleum Funds to the Minister no later than *thirty (30) working days* after the receipt of quarterly reports from the Bank of Ghana in accordance with the reporting requirements of the Bank of Ghana for the Ghana Petroleum Reserve Accounts.

(3) The chairperson of the Management Committee is responsible for reporting on the performance and activities of the Ghana Petroleum Funds for the purpose of the annual financial statements.

## **Part 6: Encumbrances, Auditing, and Reporting**

### **No Encumbrances on the Assets of the Ghana Petroleum Funds**

42. (1) All amounts in the Ghana Petroleum Funds shall, at all times, remain the property of Ghana.

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

### **Internal Audit**

43. The accounts, records and other documents relating to the Ghana Petroleum Reserve Accounts shall be audited by the internal audit department of the Bank of Ghana and shall be submitted to the Investment Management Committee.

### **External Audit**

44. (1) The Auditor-General shall be responsible for the external audit of the Petroleum Revenue Reserve Accounts annually.

(2) Where the Auditor General delegates the responsibility for the external audit of the Ghana Petroleum Reserve Accounts, the appointment of the external auditor shall not exceed three years for each contract period and is renewable for no more than two successive contract periods.

## **Annual Report**

- 45.** (1) The Minister shall submit no later than March 1 of the following year an Annual Report on the Ghana Petroleum Funds to Parliament.
- (2) The Minister shall Publish the Annual Report within *thirty (30) days* of its submission to Parliament.

## **Information Contained in the Annual Report**

**46.** The Annual Report on the Ghana Petroleum Reserve Accounts shall be prepared in a manner that makes it readily adaptable for dissemination to the public, and shall contain in particular the following information for the fiscal year for which the Report is prepared:

- (a) audited financial statements certified by the Auditor-General, comprising:
- (i) an income and expenditure statement;
  - (ii) a balance sheet, including a note listing the qualifying instruments of the Ghana Petroleum Funds;
  - (iii) details of all appropriations and transfers from the Ghana Petroleum Funds; and
  - (iv) notes to the financial statements, as per the disclosure requirements of International Financial Reporting Standards.
- (b) a report signed by the Minister describing the activities of the Ghana Petroleum Funds in the fiscal year of the Report, including all advice provided by the Investment Management Committee, any reports prepared by the external auditor under Section 45 and drawing attention to particular issues or matters that may be of concern or interest to Parliament;
- (c) a statement by the Chairperson of the Investment Management Committee on any accounting issues or practices arising from the Report that may materially affect the interpretation of amounts or activities shown in it;
- (d) the income derived from the investment of Ghana Petroleum Funds' assets during the fiscal year compared with the income of the previous two fiscal years;

(e) a comparison of the nominal income on the investment of Petroleum Funds' assets with the real return after adjusting for inflation;

(f) a comparison of the income derived from the investment of Ghana Petroleum Funds' assets with the benchmark performance indices provided to the Minister.

(g) a comparison of the estimated sustainable income for the fiscal year with the sum of transfers from the Ghana Petroleum Funds for the year;

(h) the liabilities of all Government borrowings shall be reflected in the presentation of Ghana Petroleum Funds' accounts so as to give a true representation of the past and expected future development of the Government's net financial assets and rate of savings; and

(i) a list of names of persons holding positions relevant for the operation and performance of the Ghana Petroleum Funds, including without reservation:

(i) the Minister;

(ii) the Chairperson of the Investment Management Committee;

(iii) the members of the Investment Management Committee;

(iv) the Governor of the Bank of Ghana;

(v) the Investment Manager, if any.

(2) The sources of the information described in Section 46(1), whatever their form, and including all reports and statements, shall be annexed to the Annual Report.

### **Payments made as Ghana Petroleum Reserve Accounts Receipts**

**47.** (1) The Auditor shall prepare a report for the Minister of all payments made, or that should have been made pursuant to this Act, as Ghana Petroleum Reserve Accounts receipts for each fiscal year.

(2) The Auditor may require any payer to provide any information, and to deliver proof of any facts which may be necessary for the full discharge and performance of the Auditor's duties under this Act.

(3) The Auditor's report shall state the aggregate amounts of payments made as Ghana Petroleum Reserve Accounts' receipts by each payer for the fiscal year.

(4) If the Auditor concludes that there is a discrepancy between payments made and that which should have been made, and which cannot be satisfactorily explained, he or she shall refer the matter to the Investment Management Committee in writing. In doing so, the Auditor shall also provide all information that he or she possesses regarding the discrepancy in question.

(5) Within 10 business days after receipt of the Auditor's reference, the Management Committee shall ensure the investigation of the payment discrepancy and shall supervise all necessary actions to reconcile the discrepancy.

(6) The Investment Management Committee shall ensure that any willful or grossly negligent conduct that resulted in the discrepancy is referred to the Attorney-General for necessary follow-up under the laws of Ghana.

### **Reports of the Auditor**

48.(1) The Minister shall cause the publication of the Auditor's report in the Gazette.

(2) The Auditor shall ensure that in preparing the report measures are taken to prevent the disclosure of confidential information.

## **Part 7: Accountability, Transparency and Public Oversight**

### **Transparency as a Fundamental Principle**

49.(1) The management of the Ghana Petroleum Reserve Accounts shall always be carried out with the highest internationally accepted standards of transparency and good governance.

(2) The duties concerned with ancillary matters of the Petroleum Reserve Accounts 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:

- (a) prejudice significantly the performance of the Ghana Petroleum Funds;
- (b) be misleading, as it relates to:
  - (i) incomplete analysis, research or statistics;
  - (ii) frankness and candour of internal discussion;
  - (iii) the exchange of views for the purposes of deliberation; or
  - (iv) the provision of confidential advice;
- (c) significantly affect the functioning of the Government;
- (d) amount to the disclosure of confidential communications;
- (e) substantially prejudice the management of the economy;
- (f) substantially prejudice the conduct of official market operations; or
- (g) result in or lead to improper gains or advantages;

may be declared by the Minister as confidential.

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

(5) Any information that is classified at the time when it could have been published, as well as the reasoning for it being treated as classified, shall be made available to the public upon request after five (5) years from the date on which it could have been published unless the reasons for it being classified are still valid.

(6) In the exercise of their functions and competencies under this Act, Parliament, the Government, the Minister, the Central Bank, and the Investment Advisory Board shall, irrespective of any law to the contrary, take all necessary measures to entrench transparency mechanisms and free access by the public to non-classified information.

(7) 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 within thirty (30) days after they have been finalized by the Auditor General.

### **Non-Compliance with an Obligation to Publish Information**

50. Whoever 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 .....

## **Public Oversight Committee**

**51.** There is hereby established a Public Oversight Committee.

### ***Functions of the Oversight Committee***

**52. (1 )** The functions of the Public Oversight Committee are:

(a) Advise Parliament

- i) on matters related to the management, performance and operation of the Petroleum Revenue Reserves Account;
- ii) in a timely manner on the appropriations from the petroleum funds, or any use of petroleum receipts as proposed by the Minister;
- iii) in the context of the budgetary process on whether the appropriations of the petroleum revenues for public investment are being used effectively to the benefit of current and future generations;
- iv) in the context of the economically targeted investments in the use of a portion of the Ghana Heritage Fund on whether the appropriations for those investments are being used effectively and on commercial basis to the long-term benefit of current and future generations.

(b) Receive and respond to complaints about claims of malfeasance, waste and corruption about petroleum revenues use and management and make recommendations for appropriate course of action or redress.

### ***Conducting activities of the Oversight Committee***

53. (1) In conducting its activities, the Oversight Committee shall take into account the overall objective that Petroleum Revenues are to be used for the benefit of current and future generations of citizen and the principles for the management of all Petroleum Reserves Accounts.

(2) The Committee shall

- (a) consult widely relating to the use of petroleum revenues for purposes of advising Parliament.
- (b) determine the rules of procedure under which it will operate and its decisions shall only be binding if taken by a majority with a quorum of seven members.

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

#### ***Membership of the Oversight Committee***

54. (1) The Public Oversight Committee consists of eleven (11) members and shall include

- i) three members of Parliament from three different political parties, elected in accordance with rules laid down by Parliament,
- ii) two members nominated to represent economic think-tanks and civil-society,
- iii) two members nominated from among the following:
  - (i) a former University Vice-Chancellor
  - (ii) a former Governor or Deputy Governor of the Bank of Ghana
  - (iii) a former Minister or Deputy Minister of the Ministry of Finance and Economic Planning;each having served effectively in office for at least two years.
- iv) a member nominated to represent religious organizations,
- v) a member each nominated by

- (i) National House of Chiefs,
- (ii) Association of Ghana Industries, and
- (iii) Ghana Journalists Association.

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

***Tenure of members and eligibility for appointment***

**55.** (1) The tenure of office of a member shall be two or three years.

- (a) A member appointed for a two-year tenure is eligible for re-appointment but shall not be appointed for more than two consecutive terms and is not eligible for re-appointment after a second term.
- (b) A member appointed for a three year term is not eligible for re-appointment.
- (c) A person is not eligible for appointment if that person
  - (i) has been removed from office,
  - (ii) has been convicted of a criminal offence,
  - (iii) is on trial in a court of law,
  - (iv) has been declared bankrupt or insolvent, or
  - (v) has been an executive member of a political party.
- (d) Members appointed to the Committee have security of tenure and unless otherwise provided for by law or for medical reasons may not be suspended, retired or removed from office.

## **Penalties**

**56.**(1) A person referred to in the Act who fails to do anything required by this Act, or unlawfully discloses any document or information pertaining to the operations of the Petroleum Reserve Accounts or uses any such information or document for personal benefit or advantage, commits an offence and is liable on summary conviction to a fine 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**

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

## **Regulations**

**58.** The Minister may by Legislative Instrument make Regulations for the effective carrying out of the provisions of this Act. In particular, the Minister shall make the following Regulation:

- (a) Reference price or pricing formula for purposes of taxation or of determining the payment obligations of all petroleum licensed operators to the Government.
- (b) Economic Strategic Investments designated as eligible for domestic investments on commercial basis or the criterion of High Social Rate of Return using the Heritage Funds.

## **Definitions**

In this Act, unless the context requires otherwise:

“Annual Budget Funding Amount” 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.

“Block Grant” means funds appropriated to local governments, eligible agencies and institutions to address specific mitigating activities or interventions to further national development goals.

“Central Bank” means the Bank of Ghana.

“Oversight Committee” means the Public Oversight Committee.

“confidential information” means information that is designated or marked as “confidential”.

“Economically Targeted Investments” means investments on commercial basis in capital projects that meet certain economic feasibility tests and also have high social rate of return.

“Estimated Sustainable Income” means the maximum amount that can be appropriated from the Ghana Petroleum Reserves Accounts in any fiscal year whilst leaving sufficient reserves in the Ghana Petroleum Funds amounting to the equal real value to be appropriated in all later fiscal years.

“fiscal year” means the period of twelve (12) months from 1st January to 31<sup>st</sup> December.

Ghana Petroleum Account” means the account established under Section 5 of this Act.

“Ghana Petroleum Funds” means the Ghana Heritage Fund and the Ghana Stabilization Fund established under this Act;

“Ghana Petroleum Reserve Accounts” means the Ghana Petroleum Account and the Ghana Petroleum Funds.

“Ghana Revenue Authority” means the Ghana Revenue Authority established under Ghana Revenue Authority Act, 2009 (Act 791)

“Government” means the national government of Ghana

“Governor” means the Governor of the Central Bank

“Investment Management Committee” means the body established pursuant to Section 25 of this Act

“Investment Manager” means the Central Bank or any person or entity appointed as investment or portfolio manager for purposes of this Act.

“Minister” means the Minister responsible for Finance and Economic Planning.

“National Oil Company (NOC)” means the Ghana National Petroleum Company (GNPC) and any other national oil and gas company that may be established by the State to participate directly in petroleum activities.

“Parliament” means the National Parliament of Ghana.

“payer” means any person or entity on whom there is an obligation pursuant to this present 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), as amended, varied, modified or replaced from time to time, and regulations made and directions given under it;

“

“Petroleum Authorisation” means:

- (i) an access authorisation whether on-shore or off-shore, a petroleum contract, a prospecting authorisation or a seepage use authorisation, or any agreement made

in respect of such an authorisation or contract, granted or entered into under the Petroleum Act, 2005; or

(ii) an authorisation or production sharing contract, or any agreement made in respect of such 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 all revenues or other entitlements accruing to Government therefrom.

“Petroleum Revenues” includes royalty in cash or in equivalent barrels of oil, or equivalent units of gas, payable by all licensed producers, including the National Oil Company or companies, under a Production Sharing Agreement or other agreement; corporate income taxes payable by licensed upstream and midstream operators; 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; all additional oil entitlements; dividends from the National Oil Company for Government’s equity interest; and all investment income derived from accumulated petroleum funds; 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 Art. 175 the Constitution of the Republic;

“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.

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

“Business day” means any day, except Saturdays and Sundays, that banks are open for business in Ghana.

## Schedule 1

### 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*. Such seven years being the 4 years immediately prior to the current financial year, the current financial year, and 2 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*, such 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 sections (1) and (2),
- (4) Expected gas royalty shall be calculated on the basis of expected royalties on associated gas derived from a *five-year moving average*. Such five years being the 24 months immediately prior to the current financial year, the current financial year, and 24 months immediately following the current fiscal year.
- (5) Benchmark Revenue is the sum of the expected revenue from crude oil defined in section (3), expected gas royalties defined in section (4), expected dividends from the national oil company, and the real return from investment of accumulated petroleum funds.

That is,

Benchmark Revenue = Expected current receipts from oil + Expected current receipts from gas + Expected real investment return from Ghana Petroleum Funds + Expected dividends from national oil company.

#### Annual Budget Funding Amount

- (6) The annual allocation to the budget from petroleum revenues for current spending is determined as:

Annual Budget Funding Amount = *Seventy-five percent (75%)* of Benchmark Revenue

- (7) For the purposes of this section “quarter” means a three-month period ending December 31, March 31, June 30 and September 30.

(6) All 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.

(7) All assumptions made shall be prudent, reflect international best practice and be based upon internationally recognized standards.

(8) The amount determined in accordance with the formula in paragraphs 1, 2 3 and 4 above shall be certified by the independent auditor.

## Schedule 2

### Calculating Estimated Sustainable Income for a Fiscal Year

1. Estimated Sustainable Income (ESI) for a fiscal year is the maximum amount that can be appropriated from the Ghana Petroleum Reserves Accounts in that fiscal year and leave sufficient resources in the Accounts for an amount of the equal real value to be appropriated in all later fiscal years as determined in accordance with the formula in paragraphs 2 and 3 below.

2. The ESI for a fiscal year is calculated according to the following formula:

$$ESI = r \times \text{Petroleum Wealth}$$

where:

$r$  is the estimated average real rate of return, or real interest rate, on Ghana Petroleum Funds investments in the future and, for the purposes of these calculations, shall be set equal to the real return on 10-year investment grade security, say a 10-year U.S Government bond.

3. In this Schedule, "Petroleum Wealth" at the beginning of the fiscal year  $t$  is calculated according to the following formula:

$$W_{t-1} + \text{Net Present Value } (R_0, R_1, \dots, R_n) = W_{t-1} + NPV (t=0, 1, \dots, n; \delta)$$

$$W_t = W_{t-1} + \sum_{t=0}^n \frac{R_t}{(1 + \delta)^t}$$

where:

$W_{t-1}$  is the accumulated value of the Petroleum Funds at the end of the prior fiscal year;

$R_0, R_1$ , etc. are the projections of expected annual petroleum revenues to government for current fiscal year ( $R_0$ ) and future fiscal years ( $R_1$ , etc.). Current fiscal year revenue includes all petroleum receipts plus the real expected investment income from Ghana Petroleum Funds.

$\delta$  is the discount rate set to be no more than the nominal return on 10-year U.S. Government bond.

$n$  is the production horizon or the number of years until no further petroleum revenues are projected to be received.

4. All assumptions upon which the calculations are made pursuant to paragraphs 2 and 3 above are based shall be clearly identified and explained, and any changes made in these assumptions in subsequent calculations shall be clearly pointed out.

5. All assumptions made shall be prudent, reflect international best practice and be based upon internationally recognized standards.

6. The amount determined in accordance with the formula in paragraphs 2 and 3 above shall be certified by an auditor.

## Schedule 3

### Ghana Petroleum Reserve Accounts – 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

Pursuant to Section 21 of the Ghana Petroleum Revenue Management Act (“Law”), the Minister is required to enter into an Operations Management Agreement with the Central Bank for the operational management of the Ghana Petroleum Reserve Accounts, including the Ghana Petroleum Funds.

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 Funds (“Funds”).

The Central Bank has been assigned the responsibility for the efficient operational management of the 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 Reserve Accounts 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. No less than fifteen (15) 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 Board 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;

- e. To consult with the Governor and the Investment Advisory Board, as appropriate, concerning information to be released to the public;

### **Obligations of the Central Bank**

3. The Central Bank shall be responsible for the operational management of the Ghana Petroleum Reserve Accounts, 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. Without prejudice to the responsibilities of the proper authorities for administering tax and royalty payments, maintaining a register of all payments made as Ghana Petroleum Account's receipts;
- 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 manage the Ghana Petroleum Funds' investments;
- h. Supplying information to the Minister and the Investment Management 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 Ghana Petroleum Reserve Accounts required by law, with all such information being available to the recipients at least ten (10) 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 may be determined by the Minister;

m. Assisting the Minister in the preparation of the Annual Report of the Ghana Petroleum Funds;

5. 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 by the Minister, and the auditors of the Fund.

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.

6. The Central Bank shall be permitted to invest only in the qualifying instruments described in Section 24 of the Ghana Petroleum Revenue Management Act.

7. The performance of the Ghana Petroleum Funds shall be measured periodically against the benchmark set out in an Annex to this Agreement and will be the subject of periodic reports.

8. The Minister shall give the Central Bank at least four weeks' 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.

9. 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.

10. The earmarked receipts account of the Ghana Petroleum Funds required by Section 5.2 of the Ghana Petroleum Revenue Management Act shall be account number xxx with further details as set out in xxx to this Agreement.

11. 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;

(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 Public Procurement Act, 2003 (Act 630).

(c) The Central Bank shall enter into a contract with a Fund Manager in its own name.

12. Should the Central Bank wish 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 Management Committee;

(b) The grounds for termination of a Fund Manager shall be well defined in the Investment Guidelines.

(c) The Minister may, within five (5) working days of receiving the recommendation, seek the advice of the Board concerning the proposed termination of a Fund Manager's contract.

13. 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.

14. 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 8 to 10 of the Law have been complied with, including such supporting documentary evidence as may be relevant;

(e) The signature of the Minister;

15. This agreement may be amended by the Parties at any time, provided that such amendments shall not be effective except in writing and signed by both Parties. 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.

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