

# **GHANA PETROLEUM REVENUE MANAGEMENT**

## **Preliminary Proposal**

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

## **DISCLAIMER**

**This is not a Draft Bill**

**March 17, 2010**

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

The Ministry of Finance and Economic Planning has been tasked to lead the preparation of Ghana's oil revenue and management law. This draft version of the proposal is being made available online by the Technical Team to inform the public on progress and to invite dialogue. A revised version of the proposal will reflect the results of the nation-wide public consultation and survey before presented as a bill. Please send comments to address above (*ATTENTION: Oil & Gas Technical Team*) or by email to [promofep@mofep.gov.gh](mailto:promofep@mofep.gov.gh)

## **I. Introduction**

1. The assignment is to propose a petroleum revenue management framework that (a) serves the best interests of Ghanaians, (b) ensures that the use and management of petroleum revenues are transparent and properly accounted for, and (c) is informed by international best practices. We highlight below the salient features of the proposed framework as well as the thinking behind them.
2. The document is organized as follows. Section II outlines what is in the proposal and what is not. Section III summarizes the fundamental questions that have guided much of the thinking behind the proposal. Section IV summarizes the central features of the proposal. Section V goes through, section by section, the proposed features of the law.
3. The overarching policy objectives that should guide the collection, use and management of petroleum revenue in Ghana are:
  - a) to minimize any potential negative effect on the management of the economy in general, and on public spending in particular, as a result of revenue fluctuations;
  - b) to generate an alternative stream of income to support public expenditure in the long run;
  - c) to maximize transparency and accountability in the collection, management and use of petroleum revenue and fiscal policy.
4. In putting together this proposal, we have been keenly aware of the so called “oil curse” that has come to be associated with oil rich, developing countries. This is the risk that, for many developing countries oil resources have often become a source of great waste and corruption, rather than a source of growth and of improvements in standards of living. The overarching concern for many Ghanaians is that petroleum wealth should be a blessing not a curse.
5. Proper and responsible management of the revenues should be the answer to the curse. Other policies matter as well: Setting up the right regulatory environment to guide the activities of all industry players is important; so is having an effective fiscal regime that determines the appropriate share of the petroleum revenues to Ghana.

## **II. What is in the bill and what is not**

6. All oil producing countries are faced with the following fundamental choices:
  - How to divide oil revenues between ‘what to spend now’ and ‘what to save’ (*Spending-Saving challenge*), during the period when there is still some production taking place;
  - ‘How to allocate spending in the budget’ (*Budget challenge*) and
  - ‘How to manage the savings’ (*Savings challenge*) if any.
7. Other than recommending some broad areas of use, the current proposal restricts itself largely to the *Spending-Saving* and *Savings* challenges without addressing in detail the *Budget* challenge. Detailed budget allocation decisions in any given year are to be

guided by the country's medium to long-term economic planning and budgetary processes.

8. The proposal also seeks to safeguard Ghana's oil resources and to ensure that the collection, accounting, use and management of all the revenue due to the State are placed within the context of transparent processes and accountable institutions, with mechanisms to ensure adequate public oversight (*Accountability and Transparency challenge*).

### **III. Fundamental Questions**

9. The following questions have guided the design of the framework in order to address the four challenges mentioned above.
  - i) What makes up petroleum revenues?
  - ii) How much revenues should we expect?
  - iii) Who should collect the revenues, how often?
  - iv) Should we account for petroleum revenues as part of general revenues or as special revenues
  - v) How much should go into Government coffers for current spending, How much to save?
  - vi) Should we restrict Budget Uses and if so to what?
  - vii) Should we establish savings or oil fund(s)?
  - viii) Who should manage the savings fund(s), if any, and how?
  - ix) Who may authorize withdrawals from these accounts, when and how?
  - x) How do we ensure transparency and accountability in the use and management of petroleum revenues?
  - xi) What measures must be put in place to ensure public oversight?
  - xii) Should there be additional legislation, rules and guidelines to further protect oil revenues, prevent abuses, and maximize the benefits to all Ghanaians

### **IV. Central Features of the Proposal**

10. The central features of the proposed framework are
  - Determine what constitutes petroleum revenues that are the subject of the provisions of the law.
  - Establish Ghana Petroleum Reserves Accounts (GPRAs). The Accounts shall consist of Ghana Petroleum Account and Ghana Petroleum Funds.
    - i. *Ghana Petroleum Account* is a single destination collection account for all petroleum revenues due to and collected on behalf of Government, making it easier to monitor the inflows and outflows of petroleum revenues.
    - ii. *Ghana Petroleum Funds* intended as savings funds for two purposes: in the short run to smoothen government spending, and in the long run to preserve part of the value of the oil capital while living on the interest.
    - iii. It is proposed that

- All petroleum revenues assessed under the fiscal regime, including the initial 10 percent carried interest of the State, shall be collected by the Domestic Tax Department (DTD) of the Ghana Revenue Authority (GRA).
- GNPC shall receive the additional or “paid” participating interest as revenue.
- Petroleum receipts shall be treated as separate accounts to be held at and accounted for by the Bank of Ghana.
- All withdrawals from the collection account shall be guided by rules and guidelines and shall be integrated into the national budget.
- All transfers from the collection account shall go either into the Consolidated Fund to support the budget or into Ghana Petroleum Fund(s) for savings.
- What is set aside as savings, if any, in the Ghana Petroleum Funds shall be prudently managed by investing in specific low-risk securities abroad, with allowance for Domestic Strategic Investments on commercial basis, and by having an investment board to provide oversight on how the funds are invested.
- Set out clear deposit and withdrawal rules to and from the Petroleum Account, and the Petroleum Funds.
- Define the roles of the major institutional players – the Ministry of Finance and Economic Planning, the Bank of Ghana, the Investment Advisory Board, and finally, Parliament.
- The proposed law prohibits any oil-backed forward borrowing.
- Most of the public oversight should come through existing structures of Parliament – Finance and Public Accounts Committees. It is proposed that if their capacities are in doubt, then public oversight can be strengthened by setting up an independent Public Oversight Committee (POC) with the appropriate oversight of Parliament. The composition of the POC will be structured to ensure competence and public legitimacy.

In addition,

- It is proposed that key spending and saving decision parameters not be left to the discretion of government on year-to-year basis, but rather come up for review periodically to accommodate changing circumstances and development needs.
- The law does not make recommendations for cash distribution of revenues to individuals or any fixed percentage payments to regions outside of existing mechanisms of resource transfers within the context of the national budget.
- However, there may be a case for
  - i. Specific mitigating regional or community interventions as deemed appropriate and necessary.

- ii. Strengthening fiscal decentralization and devolving some spending decisions to local governments in order to better address specific social and demographic needs, as in education, health, housing, water and sanitation, transportation and public safety.

In any event, any such additional boost in spending through the District Assembly Common Fund (DACF) or through periodic budgetary allocations, say specific or block grants, should be accompanied by clearly defined spending and accountability guidelines. We recommend the use of block grants rather than changes to the DACF allocation.

- In the event of on-shore discovery, we recommend that all the provisions of royalty payments as currently exist in the laws of Ghana shall apply to affected geographical areas.
- Finally, the law shall be characterized by the highest level of transparency and accountability consistent with the Extractive Industries Transparency Initiative.

#### **11. Public Consultations**

- Is there a role for Ghanaians in the use and management of the petroleum revenues? The answer is yes. Presently, at the design stage of the revenue management law, broad consultation is scheduled to take place during the period **February 21- March 23, 2010** in all regional capitals.
- The goal of the consultation is to create consensus on what the revenues will be used for and how; as well as how the savings, if any, would be managed. The broad consultation is also important to manage expectations, educate and minimize misinformation and misrepresentation by explaining the rationale behind savings, and why it may not always be advantageous for Ghana to spend all its petroleum revenues. It is important that the public understand how the savings would be managed, and also to gather their inputs on priority spending areas.
- In addition to the town hall consultations, the team is also conducting a nationwide survey of the public's perspectives on oil and gas revenue management, focusing on the 12 fundamental questions guiding the preparation of the law.

**12.** The framework is divided into 7 parts plus 3 schedules.

**13.** Part 1 provides definitions, scope of the framework, and general provisions.

**14.** Part 2 accomplishes four things:

- a. Establishes the Ghana Petroleum Account.
- b. Assigns the collection responsibility to the Domestic Tax Department of the Ghana Revenue Authority (or currently the Internal Revenue Service).
- c. Defines what constitutes petroleum revenues due to Government;

- d. Sets out the general standards for transparency and public accountability.

## **V. Section-by-Section Contents of the Proposal**

### **Section 5: Ghana Petroleum Account**

- 1) There is hereby established the Ghana Petroleum Account as a designated collection account at the Central Bank for the sole purpose of receiving all petroleum revenues due to the State for subsequent transfers to the national budget and to the Ghana Petroleum Funds established under this Act. The account shall not be used in any other way, nor shall it be used to provide credit to the Central Government or to State Enterprises or private sector entities, or to any other person or entity. Any borrowing against the Ghana Petroleum Reserves Account or proven petroleum reserves is strictly prohibited.
- 2) Notwithstanding the provisions of the Model Petroleum Agreement Section 10.3, all petroleum revenue due to the State from whatever source derived in or outside Ghana, shall be collected directly and accounted for by the **Ghana Revenue Authority** and deposited immediately into the Ghana Petroleum Account. The Minister, in consultation with the Board of Directors of the GRA shall provide for the Ghana Revenue Authority a reasonable collection expense as a charge on the Ghana Petroleum Account.
- 3) Where payments are made in crude petroleum in lieu of cash, the U.S. dollar cash equivalent on the date of receipt of the crude petroleum shall be reported to and recognized as such by the Ghana Revenue Authority and the proceeds of the sale of the crude petroleum shall be credited to the Ghana Petroleum Account within thirty (30) calendar days after the receipt of the crude petroleum. The allowable marketing cost shall be reimbursed to GNPC as approved by the Minister.
- 4) For purposes of this Act, petroleum revenues collected by the Ghana Revenue Authority 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 (Retention of Part of Revenue Act, 2002, (Act 628) as well as the District Assembly Common Fund Act 455 shall not apply.
- 5) The Central Bank shall publish the details of the Ghana Petroleum Account according to Section 8 of this Act as well as the Operations Management Agreement signed with the Central Bank to which Section 21 refers.

### **Section 6: Ghana Petroleum Account Receipts**

- 1) The following shall form Ghana Petroleum Account gross receipts:
  - (a) the gross revenue, royalties, all additional oil entitlements, initial carried interest from any petroleum operations including, prospecting or exploration for, and development, exploitation, transportation, sale or export of, petroleum and other activities relating thereto;
  - (b) any amount received from direct or indirect participation of Government in Petroleum Operations;
  - (c) corporate income taxes in cash 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.

2) All petroleum revenues assessed as due in each month shall be collected via electronic transfer of funds by the 15<sup>th</sup> day of the ensuing month, with quarterly reconciliation of petroleum receipts due and actual amounts collected.

### **Section 7**

(1) In the event that the Government participates in petroleum operations indirectly, through the Ghana National Petroleum Company or any other national petroleum company, the receipts of the Ghana Petroleum Account shall include the following:

- (a) any amount payable by the GNPC or other national petroleum company as tax, royalty or any other due in accordance with Ghanaian law; and
- (b) Dividends from GNPC or other national company for Government's equity interest.

(2) GNPC shall be entitled to receive the additional "paid" participating interest of Government, as direct operating revenue according as the additional paid interest is financed.

(1) All initial carried interest shall be collected by the Ghana revenue Authority as part of direct petroleum receipts to Government.

### **Section 8: Transparency and Accountability of Petroleum Receipts**

(1) For the purpose of transparency and accountability, all records of petroleum payments or receipts, including royalties, carried interest, additional interest, additional oil entitlement, dividends and corporate income tax, whether in cash directly to the Government, or in crude oil to GNPC or any other national petroleum company on behalf of the Government, shall simultaneously be published by the Minister in the **Ghanaian Gazette and in the two national daily newspapers – Daily Graphic and Ghanaian Times**, no more than twenty-one (21) 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 of Finance and the Parliament of Ghana effective the publication date.

### **Section 9**

From the petroleum accounts receipts received in accordance with Section 6.1 and Section 7 of this Act, the Central Bank 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 referred to in Section 21.

## **Part 3**

### **Section 10: Allocations and Disbursements from the Ghana Petroleum Account**

- 1) Subject to Section 9, the only disbursements permitted out of the Ghana Petroleum Account are transfers made in accordance with this Act to the national budget and to the Ghana Petroleum Funds established under this Act.
- 2) No later than September 1<sup>st</sup> of each year, the Minister shall determine the Benchmark Revenue using the formula set out in Schedule 1 and the Estimated Sustainable Income according to the formula set out in Schedule 2 of this Act, to determine the limits of annual budget support for the next fiscal year from petroleum revenues.
- 3) For the year 2010, the Annual Budget Funding Amount shall be what the Minister recommends out of 2010 petroleum receipts, if any.
- 4) For the period 2011 to the end of the production horizon, the Annual Budget Funding Amount from petroleum resources shall be the lesser of the amounts calculated and certified according to Schedules 1 and 2 of this Act.
- 5) From the year marking the end of the production horizon, when there are no current receipts from petroleum activities, the Annual Budget Funding Amount from petroleum resources shall be equal to the Estimated Sustainable Income calculated and certified according to Schedule 2.
- 6) (a) Transfer from the Ghana Petroleum Account to the Consolidated Fund for budget funding shall be in quarterly installment of one-quarter of the Annual Budget Funding Amount, or as the Minister may recommend.  
  
(b) The total amount debited from the Ghana Petroleum Account for any fiscal year shall not exceed the appropriation amount approved by Parliament for that fiscal year in accordance with subsections (4) and (5).
- 7) Transfers from the Ghana Petroleum Account by the Central Bank in any fiscal year shall only take place after gazetting of the national budget, or any subsequent changes thereto, confirming the appropriation amount approved by Parliament for that fiscal year.
- 8) All decision parameters in Schedules 1 and 2 shall be reviewed every three years by the Minister in consultation with the Central Bank and the Investment Advisory Board established under this Act and subject to parliamentary approval.

### **Section 11: Use of the Annual Budget Funding Amount**

- 1) All use of petroleum revenue whether directly from the Ghana Petroleum Account or from the Ghana Petroleum Funds shall be part of the national budget and shall be subject to the same budgetary processes and mechanisms that are necessary to ensure efficient monitoring of such use.
- 2) The allocation of the Annual Budget Funding Amount shall be to ensure a fair distribution of the national wealth among citizens, equality among citizens, and shall be in line with a long-

term national development plan, a growth and poverty reduction strategy, 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. the strengthening of the State's institutional capacity in governance, maintaining law and order, and enhancing public safety and security as approved by Parliament;
  - b. agriculture and agro-business
  - c. human resource development - education, health,
  - d. infrastructure (roads, rail, water and sanitation)
  - e. rural development,
  - f. alternative energy sources,
  - g. forest management and protection of water bodies.
- 4) Subject to subsections (3) and (5) and except for social and environment related mitigating activities, earmarking of petroleum revenues for any other special considerations is prohibited.
- 5) Social and environment related mitigating activities shall be financed by budget allocations through use of Block Grants on needs basis and should be time limited.

## **Section 12: Transfers for Exceptional Purposes:**

### **(a) Refund of Tax**

If transfers from the Ghana Petroleum Account are exceptionally permitted for purposes of refund of tax, in the event of overpayment of tax under subsection (a) of Section 6.1, the transfer amount shall represent a reduction of the Ghana Petroleum Account receipts, and shall not be considered as part of the appropriation approved under Section 10(6b).

### **(b) Royalty Payments**

Where Petroleum Operations are on-shore, royalty payments to affected and displaced communities shall be in line with royalty payments under other relevant laws of Ghana.

## **Section 13: The Ghana Petroleum Funds: Ghana Stabilization Fund and Ghana Heritage Fund**

- (1) There is hereby established the Ghana Heritage Fund and the Ghana Stabilization Fund, collectively called the Ghana Petroleum Funds, to be denominated in the currency of the United States of America or any other convertible currency approved by the Minister.
- (2) The objectives of the Funds are to:
  - (a) Cushion the economy from the impact of unanticipated petroleum revenue shocks and safeguard macroeconomic stability.
  - (b) Cushion the impact on or sustain public expenditure capacity during periods of revenue shortfalls whether caused by a fall in prices of crude oil or natural gas, or through production changes.
  - (c) Generate alternate stream of income to support public expenditure.

- (d) Provide a heritage, through the Ghana Heritage Fund for future generations of Ghanaians from savings and investment income derived from petroleum revenue.

#### **Section 14: Transfers into the Ghana Petroleum Funds**

Starting in 2011 the following rule shall apply:

- (1) Where Petroleum Revenues collected in each quarter of any financial year—
- (a) exceed one-quarter of the estimated Annual Budget Funding Amount of the financial year, as determined in Section 10(4), by more than five percent (5%), the currency of the United States of America equivalent of all the excess revenue shall be transferred from the Ghana Petroleum Account to the Ghana Petroleum Funds in accordance with Section 15; or
  - (b) exceed one-quarter of the estimated Annual Budget Funding Amount, but do not exceed such estimated amount by more than five per cent (5%), the Minister may direct that the excess revenue shall be transferred from the Ghana Petroleum Account to the Ghana Petroleum Funds in accordance with Section 15.
- (2) The transfer referred to in subsections (1) (a) and (b) above and any subsequent transfers subject to Section (15) shall be made no later than the end of the month following the quarter in respect of which the excess revenue was calculated.

#### **Section 15: Allocation of transfers into the Ghana Petroleum Funds**

Of the aggregate of the excess revenues as determined in Section 14(1), a minimum of *seventy-five percent (75%)<sup>1</sup>* shall be deposited to the Ghana Heritage Fund, with the balance of *twenty-five percent (25%)* being deposited into the Ghana Stabilization Fund during a financial year.

#### **Section 16: Outflows from the Ghana Stabilization Fund**

- (1) Subject to subsections (2) and (3) of this Section, in any given financial year and no more than one month after the end of the second quarter, where the 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 (10) percent*, 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 amount of the shortfall of Petroleum Revenues 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 so withdrawn in accordance with subsection (1) shall be deposited into the Consolidated Fund within twenty-four hours of such 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).

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### **Section 17: The Ghana Heritage Fund**

- a) Additions to the Ghana Heritage Fund shall be according to the rule specified in Section 15 of this Act.
- b) Withdrawals out of the Ghana Heritage Fund shall be according to the Withdrawal Rule set out in Section 10(5) of this Act.
- c) *The rate of return on investment from the Heritage Fund adjusted for inflation and population growth (to maintain the real per capita value of the Heritage Fund) shall be treated as part of the current year income in determining the Annual Budget Funding Amount.*

### **Section 18: Payments into the Ghana Petroleum Reserves Accounts**

For all purposes of this Act, an obligation to make a payment into the Ghana Petroleum Account, the Ghana Heritage Fund, and/or the Ghana Stabilization Fund shall not be discharged until the entire amount has been deposited, integrally and unconditionally, into the respective earmarked receipts account.

### **Section 19: Transfers Exceeding the Estimated Sustainable Income**

No transfer shall be made from the Ghana Petroleum Account for current budgetary spending in any fiscal year that exceeds the Estimated Sustainable Income for the fiscal year unless the Government has first provided Parliament with:

- a) The reports described in paragraphs (b), (c) and (d) of Section 19.
- b) A report estimating the amount by which the Estimated Sustainable Income for fiscal years commencing after the fiscal year for which the transfer is made will be reduced as a result of the transfer;
- c) A report from an Independent Auditor certifying the estimates of the reduction in Estimated Sustainable Income specified in paragraph (b); and
- d) A detailed report explaining why it is in the long-term interests of Ghana to transfer from the Ghana Petroleum Account and/or the Ghana Stabilization Fund an amount in excess of the Estimated Sustainable Income.

### **Section 20: Adjustments and Reconciliations to Petroleum Reserves Accounts**

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. Such report shall include the following information:

- 1) The Annual Budget Funding Amount for the immediately preceding two years
- 2) The actual inflows and outflows of the Ghana Petroleum Account for that year.
- 3) The balance of actual receipts over the Annual Budget Funding Amount.
- 4) Recommendations for the reconciliations and adjustments needed to account for any deviations so that
  - a. The inflows and outflows relating to the Ghana Petroleum Funds match the actuals of the year;
  - b. The Ghana Petroleum Account balance shall be reset to zero.

The report shall be gazetted and published in the two national dailies, the Daily Graphic and the Ghanaian Times no later than March 1 of the same year.

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

### **Section 21:**

#### **1) Obligations of the Minister**

- a) The Minister shall be responsible to oversee the collection, disbursement and the overall management of the Ghana Petroleum Reserve Accounts.
- b) The Minister shall not make any decisions in relation to the investment strategy or management of the Ghana Petroleum Reserve Accounts without first seeking the advice of the **Investment Advisory Board** established under Section 25 of this Act and the Governor.
- c) The Minister shall enter into an Operations Management Agreement with the Central Bank for the operational management of the Ghana Petroleum Reserve Accounts.
- d) The Operations Management Agreement shall be in form and substance similar to the example set out in Schedule III of this Act.

#### **2) Obligations of the Central Bank**

- a) The Central Bank shall be responsible for the day-to-day operational management of the Ghana Petroleum Reserve Accounts under the terms of the Operations Management Agreement.
- b) The Central Bank shall manage the Ghana Petroleum Reserve Accounts prudently, taking cognizance of established and internationally recognized principles of good governance for the benefit of the State.

### **Section 22: Quarterly Reports on the Ghana Petroleum Reserve Accounts**

- a) The Governor shall present to the Minister and to the Investment Advisory Board, quarterly reports on the performance and activities of the Ghana Petroleum Reserve Accounts on or before the 20<sup>th</sup> day of the month following the end of each quarter.
- b) The Central Bank shall Publish quarterly reports on the Ghana Petroleum Reserve Accounts no later than thirty (30) working days after the end of the quarter and shall also make the report publicly available on its website.
- c) The Governor shall ensure that in releasing, or allowing access to, such reports measures are taken to prevent the disclosure of confidential information

### **Section 23: Investment Rules and Investment Policy**

- 1) Not less than *eighty per cent (80%)* of the amounts in the Ghana Heritage Fund shall be invested in qualifying instruments described in Section 24.
- 2) Not more than *twenty (20) percent* of the amounts in the Ghana Heritage Fund shall be invested in Economically Targeted Investments – that is, targeted investments in strategic sectors of the domestic economy- on commercial basis.

- 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 Section 24.
- 4) The range of instruments designated as qualifying instruments under Section 24 shall be reviewed annually, or sooner, by the Minister on the advice of and in consultation with the Investment Advisory Board.

#### **Section 24: Qualifying Instruments**

(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 Advisory Board**

#### **Section 25: The Investment Advisory Board**

1) There is hereby established an Investment Advisory Board.

#### **Functions of the Board**

- 2) The functions of the Investment Advisory Board shall be:
- (a) Developing for the Minister, performance benchmarks of desired returns from, and appropriate risks of, the investments of the Ghana Petroleum Funds;
  - (b) Advising the Minister on the investment instructions that the Minister shall provide to the Governor for the operational management of the Ghana Petroleum Funds; and
  - (c) Advising 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.

#### **Section 26**

(1) Subject to Section 30, the Minister shall seek the advice of and consult with the Investment Advisory Board and the Governor before making a decision on any matter relating to the investment strategy or management of the Ghana Petroleum Funds.

(2) Any advice given by the Investment Advisory Board on investment strategy or 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 Central Bank and other key institutions in Ghana operate;
- (c) the need to ensure that sufficient amounts are available when needed for transfers referred to in Section 15.

### **Section 27: Appointment, Tenure, Functions and Remuneration of the Investment Advisory Board**

(1) The President on the advice of the Minister shall appoint the Investment Advisory Board for the Ghana Petroleum Funds.

(2) The Board shall comprise of five (5) 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 officers shall be a female.

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

(5) Members of the Board shall be appointed for a term of two or three years staggered, shall be eligible for reappointment for no more than 2 consecutive terms, and shall have security of tenure for their term subject to the provisions of section 28(8) of this Act.

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

(7) The members of the Board shall be paid such allowances as shall be determined by the Minister and approved by Parliament.

### **Section 28: Meetings and Quorum**

(1) The Board shall meet at such times as may be necessary or expedient for the efficient performance of its functions save that the Board shall meet at least once in every two successive months.

(2) The Chairman may at any time call a special meeting of the Board and shall call the meeting of the Board within seven (7) days of receiving a request in writing addressed to him or her by three or more members.

(3) The Chairman shall preside over meetings of the Board, but where the Chairman is unable to preside, the members present and forming a quorum may appoint a member to preside over that meeting.

- (4) A meeting shall not be held without at least one member appointed in accordance with Section 27(2) being present. Four members shall constitute a quorum.
- (5) The decisions of the Board shall be by a majority of votes of members present and in the event of a tie, the Chairman or in his absence the member presiding shall have the casting vote.
- (6) The Board may, subject to the approval of the Minister, make rules to regulate its own procedures for the conduct of its business.
- (7) The Chairman may resign his office by letter addressed to the President and a member may resign his office by letter addressed to the President through the Chairman.
- (8) The President may terminate the appointment of a member where the member—
- (a) becomes of unsound mind or is incapable of carrying out his duties;
  - (b) becomes bankrupt;
  - (c) discloses information contrary to Section 40 of this Act, or fails to disclose any conflict of interest;
  - (d) is absent, except on leave granted by the Board, from three consecutive meetings of the Board; or
  - (e) no longer meets the criteria for a fit and proper person within the context of Section 27(6).
- (9) The names of the members of the Board as first constituted and every change in the membership or the termination thereof whether by death, resignation or passage of time or for any other reason shall be gazetted and Published.
- (10) The Board shall—
- a) determine by resolution, the governance structure and the operational and investment guidelines of the Ghana Petroleum Funds based on prudential standards used by the Central Bank for investments of a similar nature;
  - b) be responsible for the oversight of the Ghana Petroleum Funds;
  - c) review from time to time, the performance of the Ghana Petroleum Funds;
  - d) perform such other related duties as may be necessary to carry out the purposes of the Ghana Petroleum Funds; and
  - e) subject to the approval of the Minister, engage the services of technical experts in the performance of its functions as needed. The fee for such service shall be a charge to the Consolidated Fund.

### **Section 29: The Secretariat of the Investment Advisory Board**

The Central Bank shall provide the secretariat for the Investment Advisory Board and any other administrative support required by the Board for the carrying out its functions.

### **Section 30: Absence of Advice from the Investment Advisory Board**

(1) The non-provision of advice by the Investment Advisory Board to the Minister, within fifteen (15) days of a request, or within such shorter time period as may be determined by the Minister having regard to the nature of the advice sought, shall not constitute an impediment for the Minister, in consultation with the Governor, to make a decision.

(2) If, having regard to the nature and urgency of the decision to be taken, there is insufficient time to seek the advice of the Investment Advisory Board in relation to a particular decision the

Minister shall in consultation with the Governor, make a decision without first seeking the advice of the Investment Advisory Board.

(3) If the Minister makes a decision under subsection 1 or 2, the Minister shall within 48 hours report in writing the making of the decision and the decision made, to the Investment Advisory Board.

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

### **Section 31: Release of the Advices of the Investment Advisory Board**

1) When required by Parliament, the Minister shall without delay provide Parliament with all advices given by the Investment Advisory Board.

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

### **Section 32: Supervision and Maintenance of Ghana Petroleum Funds Accounts and Records**

(1) The Chairman of the Investment Advisory Board shall oversee the maintenance of the Ghana Petroleum Funds accounts and records in accordance with accepted International Accounting Standards in force, to reflect the operations and financial condition of the Ghana Petroleum Funds.

(2) The Chairman of the Investment Advisory Board shall submit to the Minister quarterly management information reports and analyses on the performance and activities of the Ghana Petroleum Funds no later than thirty (30) working days after the receipt of quarterly reports from the Central Bank referred to in Section (22) of this Act.

(3) The Chairman of the Investment Advisory Board is responsible for reporting on the performance and activities of the Ghana Petroleum Funds for the purpose of the annual financial statements of Ghana.

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

### **Section 33: No Encumbrances on the Assets of the Ghana Petroleum Funds**

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

(2) Any contract, agreement or arrangement, to the extent that it purports to encumber 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.

### **Section 34: Internal Audit**

The accounts, records and other documents relating to the Ghana Petroleum Funds shall be audited every three months by the bodies responsible for the internal audits of the Central Bank and the Investment Advisory Board.

### **Section 35: Auditor**

(1) Without prejudice to the jurisdiction of any court, the Auditor-General or an internationally reputable auditor appointed by the Auditor-General shall be responsible to audit the Petroleum Revenue Reserve Accounts annually.

(2) An Auditor's appointment shall not exceed three years for each contract period and be renewable for no more than 2 consecutive contract periods.

### **Section 36: Annual Report**

(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.

### **Section 37: Information Contained in the Annual Report**

(1) The Annual Report on the Ghana Petroleum Funds 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 Independent Auditor, 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 Advisory Board, any reports prepared by the independent auditor under Section 33 and drawing attention to particular issues or matters that may be of concern or interest to Parliament;
- (c) a statement by the Chairman of the Investment Advisory Board 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 ex-

pected future development of the Government's net financial assets and rate of savings;  
and

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

- (i) the Minister;
- (ii) the Chairman of the Investment Advisory Board;
- (iii) the members of the Investment Advisory Board;
- (iv) the Governor of the Central Bank;
- (v) the Investment Manager, if any.

2) The sources of the information described in Section 35(1), whatever their form, and including all reports and statements, shall be annexed to the Annual Report.

### **Section 38: Payments made as Ghana Petroleum Funds Receipts**

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 Funds 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 Independent Auditor's duties under this Act.

3) The Auditor's report shall state the aggregate amounts of payments made as Ghana Petroleum Funds 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 Minister in writing. In referring the matter to the Minister, the Independent Auditor shall 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 Minister shall ensure the investigation of the payment discrepancy and shall supervise all necessary actions to reconcile the discrepancy. The Minister 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.

### **Section 39: Reports of the Auditor**

1) The Minister shall ensure the publication of the Auditor's report, in particular through the Annual Report provided for under Section 35 of this Act.

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**

### **Section 40: Transparency as a Fundamental Principle**

(1) The management of the Ghana Petroleum Reserve Accounts shall always be carried out, and the related duties of all relevant parties shall be discharged, with the highest internationally accepted standards of transparency and good governance.

(2) 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.

(3) 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.

(4) Any information that is classified at the time at 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.

(5) 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.

(6) The Minister shall ensure that this Act, any subsidiary legislation made hereunder, any instructions relating to the Ghana Petroleum Funds, the Operations Management Agreement and the reports referred to in Sections 35 and 36 are readily available to the public within thirty (30) days of having been finalised.

### **Section 41: Non-Compliance with an Obligation to Publicize Information**

Whoever fails to comply with any obligation to publicize 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 such an obligation, shall be punished by fine or administrative penalty.

### **Section 42: Penalties**

Any penalties provided under this Act shall be without prejudice to criminal or civil liability under Ghanaian law.

### **Section 43: Public Oversight Committee**

(1) There is hereby established a Public Oversight Committee

#### **(2) Functions**

The functions of the Public Oversight Committee shall be to:

- a) Oversee and advise Parliament on matters relating to the management, performance and operation of the Ghana Petroleum Reserves Accounts;
- b) Advise Parliament in a timely manner on the appropriations from the Ghana Petroleum Funds, or any proposed use of petroleum receipts as proposed by the Minister;
- c) In the context of the budgetary process, advise Parliament on whether the appropriations of the Petroleum Revenues for public investment are being used effectively to the benefit of current and future generations.
- d) In the context of the Economically Targeted Investments in the use of some of the Heritage Fund, advise Parliament 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.

#### **(3) Functioning of the POC**

- a) In conducting its activities, the Public 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 Ghanaians and the principles for the management of all Ghana Petroleum Reserves Accounts.
- b) For purposes of advising Parliament, the Public Oversight Committee shall consult widely relating to the use of Petroleum Revenues.
- c) The Public Oversight Committee shall 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 (7) members.
- d) Parliament shall approve and provide adequate funding for the operations of the Public Oversight Committee, including appropriate allowances for members of the Committee, through the budgetary appropriation for the operation of Parliament.

#### **(4) Membership**

The Public Oversight Committee shall consist of ten members and shall include the following:

- a) 3 members of Parliament from three different parties, elected in accordance with rules laid down by Parliament.
- b) A former Governor or Deputy Governor of the Bank of Ghana who effectively served in office for at least 2 years.
- c) A former Minister of Finance who effectively served in office for at least 2 years.
- d) 2 members nominated to represent economic think-tanks and civil-society.
- e) A member nominated by the Council of Churches to represent religious organizations.
- f) A member nominated by House of Chiefs.
- g) A former University Vice-Chancellor nominated by the Council of Higher Education

(5) Tenure of Members and Eligibility for Appointment

a) Tenure of Members

- i) Term of office of members shall be for between 2 and 4 years.
  - ii) A members appointed for a 2-year term may be eligible for re-appointment but not for more than 2 consecutive terms, and shall not be eligible for e-appointment after their second term. Members appointed for 3-year or 4-year term shall not be eligible for re-appointment.
- b) A person shall not be eligible for appointment if the person has been removed from office, has been convicted of a criminal offence, is on trial in a court of law, has been declared bankrupt or insolvent, or has been an executive member of a political party.
- c) 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.

(6) Economic Advisor to the Public Oversight Committee

Subject to the approval of Parliament, the Public Oversight Committee may appoint as an expert advisor on economic and financial matters for a tenure of two years renewable once, an academic or professional of highest reputation and competence with the appropriate and relevant competencies.

**Section 44: Transitional and Final Provisions**

All appointments necessary for the effective functioning of the Investment Advisory Board and the Public Oversight Committee shall be made within three (3) months of the entry into force of this Act.

**Section 45: Subsidiary Laws and Regulations**

The Minister may make regulations for the effective carrying out of the provisions of this Act, including regulations of a transitional nature consequent upon the making of this present Act.

**SCHEDULES**

**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 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.
- (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 12 months immediately prior to the current financial year, the current financial year, and 12 months immediately 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 royalty 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 estimated as *predetermined percentage* (or budget price) of the Benchmark revenue defined in section (5). That is,

Annual Budget Funding Amount = *predetermined percentage* 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:

$$ESI = (r-p) \times \text{Petroleum Wealth}$$

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.

$\rho$  is the estimated population growth intended to maintain the real per capita value of the fund, and for the purpose of these calculation shall be 2.6%. The number  $(r-\rho)$  is the population adjusted long-term real rate of return.

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 estimated value of the Petroleum Funds at the end of the prior fiscal year;

$R_0, R_1, \text{ etc.}$  are the projections of expected annual petroleum revenues to government for current fiscal year ( $R_0$ ) and future fiscal years ( $R_1, \text{ etc.}$ ). 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.