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***SCHEDULE***

A

**BILL**

ENTITLED

**PETROLEUM (EXPLORATION AND PRODUCTION)**

**ACT, 2010**

AN ACT to provide for petroleum exploration and production and for related matters.

PASSED by Parliament and assented to by the President:

*Petroleum rights*

**Petroleum property of the Republic**

1. Petroleum existing in its natural state within the jurisdiction of the Republic of Ghana is the property of the Republic of Ghana and is vested in the President on behalf of and in trust for the people of Ghana subject to any right granted, conferred, acquired, recognised or saved under this Act.

**Exploration, development, production of petroleum**

2. (1) A person who intends to explore, develop or produce petroleum shall do so under a petroleum agreement and in accordance with the Regulations.

(2) A person other than the Ghana National Petroleum Corporation established under the Ghana National Petroleum Corporation Act, 1983 (PNDCL. 64) shall not engage in the exploration, development or production of petroleum except in accordance with the terms of a petroleum agreement entered into between that person, the Republic and the Corporation.

### **Ownership of petroleum data**

3. The data and information obtained by a contractor or subcontractor as a result of petroleum operations and the geological, geophysical, technical, financial and economic reports, studies, interpretations and analysis prepared by or on behalf of a contractor or subcontractor in connection with the petroleum operations are the property of the Republic.

### *Regulation of Petroleum operations*

### **Ministerial responsibility**

4. The Minister responsible for petroleum shall regulate petroleum operations.

### **Inspection**

5. (1) The Minister or the Authority may authorise any person to inspect petroleum operations to ensure that the petroleum operations are carried out in accordance with the provisions of this Act and in accordance with the terms and conditions of any applicable petroleum agreement or petroleum subcontract.

(2) The person authorised by the Minister or the Authority has the right at reasonable times to

- (a) enter any area, structure, platform, vehicles, installation, vessel, aircraft, facilities, offices or buildings used by the Corporation, a contractor or subcontractor for petroleum operations;
- (b) inspect, test and audit, as appropriate, the works, equipment, operations and financial books of account, records and registers of a contractor or subcontractor or the Corporation related to or used in petroleum operations;
- (c) take and remove petroleum, water or other substance from a well for the purposes of analysis or testing the sample;
- (d) inspect, take extracts from, and make copies of any document relating to the operations; and
- (e) make examinations and inquiries that are necessary to ensure that the provisions of this Act and the Regulations are being complied with.

(3) A contractor or subcontractor or the Corporation shall provide the authorised person with reasonable facilities and assistance to enable the effective and timely performance of the inspection functions under this section.

### **Petroleum operation standards**

6. (1) Any operations under a petroleum agreement or other authority granted under this Act shall be carried out in accordance with the Regulations and the best international practices in the exploration and production of petroleum.

(2) These practices shall include reasonable steps to

- (a) prevent waste of petroleum in order to optimise the ultimate recovery of petroleum from a petroleum field;

- (b) secure the health, safety and welfare of persons engaged in these operations;  
and
- (c) secure the health, safety and welfare of communities and the environment in the operational area.

(3) Any operations under a petroleum agreement or other authority granted under this Act shall be in accordance with any directives given, restrictions imposed or requirements made by the Minister and other relevant agencies to ensure compliance with the Regulations.

### **Request for information**

7. (1) The Minister or the Authority may request any person to provide information in writing, within the period specified in the request, and such information and documents that may be specified therein.

(2) Any person requested to furnish the information or provide the document shall comply with the request within the requested period.

### **Environmental principles**

8. Each contractor and person who performs a function, discharges a duty or exercises a power under this Act in relation to the exploration, development and production of petroleum resources shall take into account and give effect to the environmental principles prescribed in the Environmental Protection Agency Act, 1994 (Act 490), the subsidiary legislation under that Act and any other relevant legislation.

### **Management of blocks**

9. (1) The Minister is responsible for the preparation of a reference map showing areas of potential petroleum accumulation within the jurisdiction of Ghana divided into numbered areas each of which shall be described as a block.

(2) The Minister may decide to close certain blocks other than those covered by a petroleum agreement or other authority and may redefine the boundaries of open blocks or give notice of the opening of new blocks in the *Gazette* and any other manner determined by the Minister.

(3) A decision of the Minister to close or redefine the boundaries of open blocks shall not become operative until after the expiration of ninety days after a notice of the closure or redefinition of the boundaries of open blocks has been published in the *Gazette* and in any other manner determined by the Minister.

(4) During the period of ninety days, any person may make a representation to the Minister as regards the decision to close or redefine open blocks.

(5) A closure or redefinition of open blocks shall not operate to change the area covered by an existing petroleum agreement at the time of the closure or redefinition.

### **Unitisation**

10. (1) The Minister may determine that a petroleum field shall be developed as a single unit where a petroleum field extends beyond the boundaries of an area covered by a petroleum agreement into another area covered by another petroleum agreement and the Minister may give appropriate directions to the Corporation or the contractors or any other person concerned in accordance with the Regulations.

(2) The Minister may determine that a petroleum field shall be developed as a single unit in association with the Corporation as operator for the block not covered by a petroleum agreement where a petroleum field extends beyond the boundaries of an area covered by a petroleum agreement into an area not covered by a petroleum agreement and the Minister may give appropriate directions to the Corporation and the contractor in accordance with the Regulations.

(3) The Corporation or the contractor shall relinquish a discovery where it indicates that the discovery does not merit appraisal.

(4) The Corporation or the contractor shall prepare and submit to the Minister and the Authority, a programme and time-table for approval to carry out an adequate and effective appraisal of the discovery after indicating that the discovery merits appraisal.

(5) The programme and time table shall enable a determination to be made as to whether the discovery constitutes a commercial accumulation.

(6) The period to carry out the appraisal shall be specified in the petroleum agreement or in accordance with the Regulations.

(7) The Corporation or the contractor shall prepare and submit to the Minister and the Authority the results of the appraisal programme stating the details of parameters on which the appraisal decision is made.

(8) Where a contractor declares a discovery to be non-commercial, the area which comprises the geological structure in which the discovery is located shall be relinquished by the contractor.

#### **Development and decommissioning plans**

14. (1) Where a commercial accumulation is established, it shall be developed by the Corporation or the contractor in accordance with the Regulations and with the best international techniques and practice prevailing in the petroleum industry in order to ensure the most efficient, beneficial and timely exploitation of the petroleum resources concerned.

(2) The Corporation or a contractor shall submit to the Minister and the Authority for approval a development plan including a decommissioning plan in respect of any petroleum field to be developed directly by the Corporation or by the contractor in accordance with the terms of a petroleum agreement and the Regulations.

(3) Operations to implement a development plan shall not commence unless the plan has been approved by the Minister.

#### **Annual and long-term production programmes**

15. (1) The Corporation or a contractor shall submit annual and long-term production programmes in respect of any petroleum accumulation to be developed for the approval of the Minister in accordance with the terms of a petroleum agreement and the Regulations.

(2) The Minister may direct the Corporation or a contractor to take the necessary and practical steps to increase or reduce the rate at which petroleum is being recovered to the rate that will enhance optimum recovery of petroleum from the accumulation and will not exceed the capacity of existing production facilities in accordance with the Regulations.

#### **Restoration of affected lands and decommissioning**

16. After the termination of petroleum operations in an area

- (a) the Corporation, in the case of operations pursuant to subsection (1) of section 18, or
- (b) the contractor in the case of operations pursuant to a petroleum agreement in accordance with subsection (2) of section 2

shall restore the affected areas and remove the causes of damage or danger to the environment in accordance with the Regulations and shall carry out decommissioning in accordance with the approved development and decommissioning plan.

### **Decommissioning Fund**

17. (1) The Corporation or contractor shall establish a decommissioning fund on the date and in the form that may be specified in the development plan but in any event not later than ninety days after the approval of a development plan by the Minister.

(2) The decommissioning fund shall be in an amount sufficient to cover the full cost of decommissioning and the Corporation or the Contractor shall make the annual payments prescribed or as provided in the petroleum agreement.

(3) Money shall not be disbursed from the decommissioning fund except in the amount paid in respect of expenditure incurred in relation to decommissioning in accordance with an approved decommissioning plan and to costs of the administration of the fund.

### *Corporation Petroleum Operations*

#### **Right of Corporation over blocks**

18. (1) The Corporation has the right to undertake exploration, development and production of petroleum over the blocks declared by the Minister as open for petroleum operations over which a petroleum agreement does not exist subject to the approval of the Minister and the Regulations.

(2) Where the Corporation carries out exploration activities and a discovery is made and the Corporation decides to develop and produce the field in association with a contractor, the contractor shall first enter into a petroleum agreement with the Republic and the Corporation to specify the terms and conditions under which the petroleum operation shall be carried out.

(3) In a situation where the Corporation explores, develops and produces petroleum not in association with a contractor under the terms of a petroleum agreement, the operations of the Corporation shall be carried out in accordance with the terms and conditions prescribed in the Regulations and in accordance with a long-term exploration and production programme and annual programme drawn up by the Corporation in respect of each block and approved by the Minister and the Authority.

(4) The Corporation may employ subcontractors that it considers necessary to perform its functions but these subcontractors are not entitled to any share of petroleum produced as a result of their operations.

(5) The employment of subcontractors by the Corporation shall be approved by the Minister and the Authority.

### *Contractor Petroleum Operations*

#### **Validity of petroleum agreement**

**19.** (1) A person other than the Corporation who intends to undertake the exploration, development or production of petroleum shall enter into a petroleum agreement with the Republic and the Corporation.

(2) The person shall submit an application to the Minister in accordance with the Regulations.

(3) The Minister shall forward a copy of the application to the Authority and the relevant agencies.

(4) The Minister shall represent the Republic of Ghana in negotiations for and entry into a petroleum agreement.

(5) A petroleum agreement entered into by the Minister shall not be effective unless ratified by Parliament in accordance with article 268 of the Constitution.

(6) The entry into a petroleum agreement by the Minister is deemed to be requisite and sufficient authority over the land in relation to which the terms of the agreement are to be carried out.

(7) The fiscal arrangements in a petroleum agreement shall be made in consultation with the Minister responsible for Finance.

#### **Contract area**

**20.** The area subject to a petroleum agreement shall be a block, part of a block or contiguous parts of a number of contiguous blocks not exceeding the agreed limit specified in the petroleum agreement.

#### **Term of petroleum agreement**

**21.** (1) A petroleum agreement

(a) is valid for a period not exceeding twenty five years with an option to extend for a further five years except where the agreement provides for termination at an earlier date; and

(b) terminates seven years after the effective date where a commercial discovery of petroleum is not made.

(2) The period commencing from the effective date of a petroleum agreement until the date of termination of the agreement shall constitute the exploration period if a commercial discovery is not made.

(3) The exploration period of up to seven years shall be divided into an initial exploration period and other periods as may be agreed.

(4) Where a discovery of petroleum is made towards the end of the exploration period specified, the Minister may grant an extension of the period in respect of the area comprising the geological structure in which the discovery is located on terms and conditions that the Minister considers fit to enable a determination to be made as to whether the discovery of petroleum constitutes a commercial accumulation.

#### **Relinquishment of contract area**

**22.** (1) A petroleum agreement shall provide for the exploration period to be divided into working periods tied to specific work and expenditure obligations.

(2) A petroleum agreement shall provide for the relinquishment in a phased manner of portions of an area to which the agreement relates after the expiration of each working period.

(3) An area relinquished in accordance with the terms of a petroleum agreement shall, in so far as it is possible, be contiguous and compact and of the size and shape that will permit the effective carrying out of petroleum operations in the relinquished area and shall be in accordance with the Regulations.

(4) The area to be retained at the end of the exploration period shall, in so far as possible, comprise the geological structures for the discoveries of petroleum which may have been made in the contract area and shall be of the size and shape that the Minister shall approve.

#### **Minimum work and expenditure obligations**

**23.** (1) A petroleum agreement shall provide for minimum work and expenditure obligations to be fulfilled by a contractor during each working period of the exploration period.

(2) A petroleum agreement shall provide that a contractor who fails to fulfill either in whole or in part the minimum work obligations during the exploration period shall pay the estimated cost to the Corporation for the unfulfilled portion prorata to enable the Corporation complete the minimum work and the petroleum agreement shall terminate immediately.

#### **Production of natural gas**

**24.** (1) A petroleum agreement shall provide that any natural gas produced in association with crude oil may be used in petroleum operations as agreed between a contractor and the Corporation, but in any event, the use shall be in accordance with the Regulations and with good petroleum industry practice and approved production plans.

(2) The natural gas produced by a contractor in association with crude oil which is not used in petroleum operations, shall be the property of the Republic.

(3) Any natural gas produced by a contractor not in association with crude oil, shall be the property of the Republic unless otherwise agreed in the petroleum agreement.

#### **Participating interest**

**25.** A petroleum agreement shall provide that the Republic shall

(a) have an initial interest of at least 10% carried through exploration and development, and

(b) have the option to acquire an additional interest which shall be a paying interest within a specified period of time from the date a discovery is declared to be a commercial discovery.

#### **Right of first refusal**

**26.** A petroleum agreement shall provide that a contractor who decides to dispose of its interest whether in part or in whole shall give the right of first refusal to the Republic to acquire the interest at a fair value.

#### **Transfer of assets to the Corporation**

**27.** (1) A petroleum agreement shall provide for the transfer to the Corporation of the physical assets purchased, installed, constructed by the contractor for petroleum operations and the cost of which has been included in petroleum expenditures, but the contractor shall have the use of the assets for purposes of operations under a petroleum agreement and shall remain liable for maintenance, insurance and other costs associated with the use.



(2) A physical asset that is used by a contractor in petroleum operations as a capital or financial lease shall be treated as a purchased asset.

(3) A petroleum agreement shall provide for the transfer to the Corporation of an asset the cost of which has been substantially recovered after the Corporation makes monetary payments equal to the unrecovered portion of the cost of the asset.

(4) Without prejudice to subsection (1), after termination of petroleum operations in any area, a contractor shall give the Corporation an option to acquire any movable and immovable assets used for the petroleum operations and the operation of section 16 of this Act may be modified accordingly at the request of the Corporation.

(5) The provisions of this section shall not require a contractor to transfer to the Corporation equipment or any other assets rented or leased by the contractor for use in petroleum operations and which are of the type customarily leased for use in accordance with petroleum industry practice.

### **Review of terms and conditions**

**28.** A petroleum agreement shall provide for a review of its terms at any time that a significant change occurs in the circumstances prevailing at the time of the entry into the agreement or the last review of the agreement.

#### *Rights and obligations of contractors and subcontractors*

### **Contracts and subcontracts**

**29.** (1) A contractor shall not directly or indirectly assign its rights and obligations under a petroleum agreement to a third party without the prior written consent of the Minister whether in whole or in part.

(2) A contractor or subcontractor shall not enter into a petroleum subcontract without the prior written consent of the Authority.

(3) A contractor or subcontractor shall not directly or indirectly assign its rights and obligations under a petroleum subcontract to a third party without the prior written consent of the Authority whether in whole or in part.

### **Duty to exercise due diligence**

**30.** (1) A contractor or subcontractor shall conduct petroleum operations under a petroleum agreement or petroleum subcontract with due diligence and efficiency and in accordance with the Regulations and with the best international techniques and practices prevailing in the petroleum industry.

(2) The contractor or subcontractor shall conduct the petroleum operations in a workman-like manner, observing sound engineering and technical practices and using appropriate advanced technology and effective equipment, machinery, methods and materials.

### **Data and information**

**31.** (1) A contractor or subcontractor shall not retain or export or permit the retention or export of the data or documents without the prior written approval of the Corporation and where the data or documents are exported, the contractor or subcontractor shall return them to Ghana forthwith at the written request of the Corporation.

(2) Where the interpretations or analysis is done outside Ghana, copies of the reports shall immediately be forwarded to the Corporation by the contractor or subcontractor responsible for them.

(3) A contractor or subcontractor shall keep the data acquired and any existing data released to the contractor or subcontractor by the government or the Corporation confidential and shall not disclose the data to a third party without permission from the Minister except as may otherwise be provided in accordance with the terms of a petroleum agreement or petroleum subcontract.

(4) A contractor or subcontractor shall maintain complete and accurate records in Ghana of the operations carried out by the contractor or subcontractor and shall also complete and keep accurate books of account, records and registers relating to the activities.

(5) A contractor or subcontractor shall furnish reports on petroleum operations being carried out by the contractor or subcontractor to the Minister at regular intervals and shall also furnish the Minister with the data, information or reports that the Minister may request in writing.

### **Guarantees, securities and indemnities**

**32.** (1) A contractor or subcontractor shall furnish the Minister with performance bonds and guarantees in an amount that may be determined in accordance with the Regulations and in accordance with the terms of a petroleum agreement or petroleum subcontract entered into under this Act in order to ensure the fulfillment of the obligations undertaken by the contractor or subcontractor or the discharge of liabilities arising out of the operations under the petroleum agreement or petroleum subcontract and to ensure compliance with this Act and the Regulations.

(2) A contractor or subcontractor shall keep the Corporation indemnified against claims arising from the operations of the contractor or subcontractor brought by third parties.

(3) Contractors who jointly hold a petroleum agreement are jointly and severally responsible to the Republic for financial and other obligations arising out of petroleum activities under the petroleum agreement.

(4) Where liability in respect of a third party is incurred by a person who undertakes a task for a contractor or subcontractor, the contractor or subcontractor is liable for damages to the same extent as, and jointly and severally with the perpetrator and if applicable, the employer of the perpetrator.

### **Employment and local content**

**33.** (1) A contractor or subcontractor shall ensure that opportunities are given as far as is possible for the employment of citizens who have the requisite expertise or qualifications in the various levels of the operations in accordance with the Regulations and with the terms of a petroleum agreement or petroleum subcontract.

(2) A contractor or subcontractor shall not engage in discriminatory practices on grounds of race, nationality or gender in the conditions of service provided for personnel.

(3) A contractor or subcontractor shall use goods and services produced or provided in Ghana for petroleum operations in preference to foreign goods and services in accordance with the Regulations and the petroleum agreement or subcontract.

(4) A contractor or subcontractor shall prepare and implement plans and programmes to train citizens in job classifications and in all aspects of petroleum operations in consultation with the Corporation and in accordance with the Regulations and the terms of the petroleum agreement or petroleum subcontract.

### **Technology transfer**

**34.** A contractor or subcontractor shall prepare and implement plans for the transfer to the Corporation of advanced technological know-how and skills related to petroleum operations while carrying out petroleum operations, but this provision shall not be interpreted to disable the contractor or subcontractor from protecting the competitive position of the contractor or subcontractor in the petroleum industry or requiring the Corporation also to take steps to protect its competitive position.

### **Incorporation of local company**

**35.** Except for subcontractors exempted from the requirements of this subsection by the Regulations, a contractor or subcontractor shall

- (a) incorporate a company in Ghana under the provisions of the Companies Act, 1963 (Act 179) to be authorised to carry out solely petroleum operations in respect of each petroleum agreement or petroleum subcontract to be entered into under this Act and the company shall be a signatory to the petroleum agreement;
- (b) maintain an office or establishment in Ghana to carry out petroleum operations and shall have in charge of the office or establishment a representative with full authority to act and to enter into binding commitments on behalf of the contractor or subcontractor; and
- (c) in respect of each petroleum operation, open and maintain an account with a bank in Ghana.

### **Non assignment of petroleum agreements**

**36.** The holder of a petroleum agreement shall not for any purpose and by any means whether conveyance or share transaction directly or indirectly assign its rights or obligations under the agreement without the prior consent in writing of the Minister whether in whole or in part.

### **Change of ownership**

**37.** Shares of a contractor's incorporated company in Ghana shall not be directly or indirectly transferred to a third party without the written approval of the Minister if the effect of the transfer is either to give the third party control of the company or to enable the third party take over the interests of a shareholder.

### **Health, safety and environment**

**38. (1)** A contractor or subcontractor carrying out petroleum operations

- (a) shall maintain at the work site an establishment capable of dealing adequately with fire, oil spills, gas leakages, blow-outs, accidents or other emergency situations so as to prevent or control the situations and to minimize loss or damage therefrom; and
- (b) is responsible for any pollution or damage caused by or resulting from the operations as well as pollution or damage caused by or resulting from petroleum operations undertaken by an agent or employee of the contractor or

subcontractor and the contractor shall take the necessary measures to remedy any pollution or damage so caused.

(2) The Minister or the Authority may take necessary measures to ensure safety and may recover the costs and expenses of so doing from the contractor or the subcontractor after giving the contractor or subcontractor reasonable notice if at any time, a contractor or subcontractor fails to carry out petroleum operations in a safe manner in accordance with the Regulations and with the best international techniques and practices prevailing in the petroleum industry under comparable circumstances.

### **Domestic supply requirement**

**39.** (1) A petroleum agreement shall provide for a domestic supply obligation to the Republic to ensure that no less than five percent of the contractor's entitled petroleum is to be supplied to the domestic market at a negotiated price.

(2) In the event that the petroleum available to the Republic is insufficient to fulfill the domestic supply requirements, the contractor together with any other contractors who produce petroleum in Ghana are obliged to supply a volume of petroleum to be used for domestic supply requirements, calculated on the basis of the ratio of the contractor's entitlement to petroleum, but the contractor's obligation to supply petroleum for domestic supply requirement shall not exceed the total of the contractor's entitlement under the petroleum agreement.

(3) The Minister may require a contractor to sell all or part of the quantity of petroleum produced at the prevailing market price to the Republic or any agency of the Republic, in the event of war or other emergency affecting energy supplies.

### *Fiscal provisions*

### **Payment of royalties**

**40.** (1) There shall be payable to the Republic, royalty in respect of any petroleum produced and saved in Ghana.

(2) The royalty to be paid shall be as prescribed, except that where the rates of royalty payable are not prescribed, royalty shall be paid as otherwise provided in accordance with the terms of a petroleum agreement in respect of the area to which the agreement relates.

(3) Petroleum produced by the Corporation carrying out petroleum operations pursuant to subsection (3) of section 18 shall be subject to the payment of royalty at the rates that may be prescribed.

(4) Petroleum produced under a petroleum agreement shall be subject to the payment of royalty at the rates prescribed or that may be specified in the agreement and the Corporation is liable for the payment of the royalty as due in respect of the petroleum.

### **Annual fee in respect of acreage**

**41.** (1) There shall be payable to the Republic by a contractor annual acreage fees.

(2) The Minister shall prescribe the amount to be paid, except that where the amounts are not prescribed, the annual acreage fees shall be as provided in accordance with the terms of a petroleum agreement in respect of the area to which the agreement relates during the initial exploration period or other periods that may be agreed.

### **Tax**

42. (1) A contractor shall pay taxes, including, petroleum income tax and capital gains tax in accordance with the related laws.

(2) A petroleum agreement shall provide for the financing of petroleum operations with loans from a third party.

(3) The third party shall be considered a subcontractor and shall be subject to withholding tax on the interest payments on the loans.

(4) The interest rate for the loans shall not exceed the lowest market interest rates available for these loans.

(5) The percentage of loans used as a portion of the total capital shall receive prior approval of the Minister in accordance with the Internal Revenue Act, 2000 (Act 592) and the cost of any unapproved loan shall not be treated as allowable or deductible for tax purposes.

(6) The profits resulting from any direct or indirect assignment, transfer or any other disposal of rights under a petroleum agreement, regardless of the beneficiary, type or location of the transaction shall be subject to taxes at the rate stated in the Internal Revenue Act, 2000 (Act, 592).

#### **Bonus payments**

43. A petroleum agreement shall provide for the payment of bonuses to the Republic as may be prescribed, except however, that where the type and quantum of the bonus payable is not prescribed, bonuses shall be paid as otherwise provided in accordance with the terms of a petroleum agreement in respect of the area to which the agreement relates.

#### **Additional oil entitlement**

44. The Republic is entitled to a portion of a contractor's share of petroleum produced from each field on the basis of the after-tax inflation-adjusted rate of return that the contractor achieved with respect to each field.

#### *Miscellaneous provisions*

#### **Transactions between contractor and affiliates**

45. Subject to the provisions of this Act any transaction between a contractor or subcontractor and an affiliate in relation to petroleum operations to be carried out under this Act shall be on the basis of prevailing international competitive prices and other terms and conditions that would be fair and reasonable if the transaction had taken place between the contractor or subcontractor and a non-affiliate.

#### **Auditing**

46. An auditor appointed by the Minister or the Authority or any person authorised by the Minister or the Authority has the right at any reasonable time to inspect, test and audit the works, equipment, operations and financial books of account, records and registers related to petroleum operations performed by a contractor or a subcontractor and to make abstracts or copies of any document pertaining to the operations for the Minister and the Authority.

#### **Offences and penalties**

47. (1) A person who

(a) undertakes petroleum operations otherwise than in accordance with this Act,

- (b) unlawfully interferes with or obstructs the Corporation or a contractor or subcontractor or their agents or employees in the exercise of a right under this Act,
- (c) willfully obstructs, hinders, or assaults any other person in the exercise of a right, power or in the performance of a function under this Act, or
- (d) otherwise contravenes any other provision of this Act

commits an offence and is liable on summary conviction to a fine not exceeding ten thousand penalty units and, where the offence continues, to a fine not exceeding one thousand penalty units for each day during which the offence continues or to a term of imprisonment not exceeding twelve months or to both the fine and the imprisonment.

(2) Where an offence which has been committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a director, manager or other officer or partner of the body corporate or partnership or any person who purported to act in that capacity, the person concerned and the body corporate or partnership is liable to a fine not exceeding fifty thousand penalty units or to a term of imprisonment not exceeding five years or to both the fine and the imprisonment.

(3) A person who

- (a) engages in the exploration, development or production of petroleum other than the Corporation without a petroleum agreement commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand penalty units or a term of imprisonment not exceeding five years or both,
- (b) assigns a petroleum agreement directly or indirectly either in whole or in part, without the prior consent of the Minister commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand penalty units or a term of imprisonment not exceeding five years or both,
- (c) commences to implement a development plan without the approval of the Minister commits an offence and is liable on summary conviction to a fine not exceeding two hundred thousand penalty units,
- (d) fails to fulfill the minimum work and expenditure obligations under a petroleum agreement at the end of the relevant period commits an offence and is liable on summary conviction to
  - (i) a fine not exceeding fifty thousand penalty units, and
  - (ii) the penalty provided under section 47 (2) of this Act,
- (e) fails to pay the annual fees in respect of the acreage to which the petroleum agreement relates for the relevant period commits an offence and is liable on summary conviction to
  - (i) a fine not exceeding fifty thousand penalty units, and
  - (ii) the outstanding annual fees,
- (f) assigns directly or indirectly the rights and obligations under a petroleum subcontract, in whole or in part, to a third party without the prior written consent of the Authority, commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand penalty units or a term of imprisonment not exceeding two years or to both,
- (g) retains or exports or permits the retention or export of data, the property of the Republic or documents relating to petroleum operations which is the property

of the Corporation without the prior approval in writing of the Corporation commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand penalty units or a term of imprisonment not exceeding five years or to both,

- (h) discloses data acquired in petroleum operations and existing data released to it by the Minister, Authority or Corporation which is confidential to a third party without permission from the Minister, Authority or Corporation as the case may be, commits an offence and is liable on summary conviction to
    - (i) a fine not exceeding fifty thousand penalty units, and
    - (ii) the licensing cost of the data disclosed,
  - (i) transfers a share in its incorporated company in the Republic to a third party directly or indirectly contrary to section 37 of this Act without the written approval of the Minister, commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand penalty units or a term of imprisonment not exceeding five years or to both,
  - (j) fails to comply with a lawful request to furnish information or a document under this Act or the petroleum agreement within the period specified in the request commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand penalty units,
  - (k) in any return, report or other document required to be submitted under this Act to the Minister, Authority or Corporation wilfully makes a false statement, knowing it to be false commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand penalty units or a term of imprisonment not exceeding five years or to both,
  - (l) unlawfully interferes with or obstructs petroleum operations under this Act commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand penalty units or a term of imprisonment not exceeding twelve months or to both,
  - (m) wilfully obstructs, hinders or assaults any other person in the exercise of a right or power conferred under this Act commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand penalty units or a term of imprisonment not exceeding twelve months or to both,
  - (n) removes petroleum from an area from which it has been obtained to any other area, or disposed of in any other manner commits an offence and is liable on summary conviction,
    - (i) in the case of an individual, to a fine not more than seven hundred and fifty thousand penalty units or to a term of imprisonment of not more than five years or to both, and
    - (ii) in the case of a body corporate, to a fine not more than one million five hundred thousand penalty units.
- (4) Where a person is convicted of an offence under this Act, a Court may, in addition to any other penalty imposed
- (a) make an order for the forfeiture of any vehicle, aircraft, vessel or equipment used in the commission of the offence; and
  - (b) make an order

- (i) for the forfeiture of petroleum recovered in the course of the commission of the offence;
- (ii) for the payment by that person to the Republic of an amount equal to the proceeds of the sale of the petroleum received; or
- (iii) for the payment by that person to the government of the value at the wellhead, assessed by the Court in respect of the quantity recovered or for the payment of the part of that amount as the Court, having regard to all the circumstances, considers fit.

(5) Where the Court is satisfied that an order made under subsection (1)(b) cannot for any reason be enforced, the Court may, on the application of the person by whom the proceedings were brought set aside the order and make an order referred to in subsection (4)(b)(ii) and (iii).

(6) The Court may, before making an order, require notice to be given to a person and to hear any other person as the Court considers fit.

(7) The penalties stated in this section are in addition to whatever penalties are contained in the petroleum agreement for the specified breaches.

#### **Interim role of the Ministry**

**48.** In this Act, until the establishment of the Authority reference to Authority shall be construed as reference to the Ministry of Energy.

#### **Regulations**

**49.** (1) The Minister may, by legislative instrument, make Regulations prescribing the matters that by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The penalty for contravention of Regulations shall be a fine of not more than five thousand penalty units or a term of imprisonment of not more than three years or to both.

(3) Without limiting subsection (1), the Minister may, make Regulations for or with respect to

- (a) ensuring the safe construction, maintenance and operation of installations, facilities and equipment used in connection with petroleum operations;
- (b) identification of installations and facilities used in connection with petroleum operations;
- (c) the health, safety and welfare of persons employed in petroleum operations and generally for necessary safety measures;
- (d) the prevention of pollution and the taking of remedial action in respect of pollution which may occur in connection with petroleum operations;
- (e) the inspection of areas in which petroleum operations are being carried out and of the plant, machinery and equipment within those areas;
- (f) the reporting of and inquiries into accidents arising out of petroleum operations;
- (g) the keeping and inspection of records, accounts, statistics and plans with respect to petroleum operations;
- (h) the relinquishment of portions of areas subject to the petroleum agreement;
- (i) the protection of fishing, navigation, and any other activities carried out within or in the vicinity of areas in which petroleum operations are being carried out;
- (j) the making and submission of reports, returns and programmes;



- (k) the standards for petroleum and petroleum products and their transportation in consultation with the Standards Authority;
- (l) the rates of royalty payable in respect of petroleum production, the methods of calculation of the amount of royalty and the manner and times of payment;
- (m) the reference map of numbered areas, each of which shall be described as a block, and guidelines on the opening and closing of blocks and the maximum number of blocks that may be held under a petroleum agreement by an applicant;
- (n) competitive bidding procedures for petroleum agreements;
- (o) determining the value of crude oil and natural gas;
- (p) determining the domestic supply requirement;
- (q) requiring the Corporation and a contractor to submit to the Authority and the Minister their investment programme;
- (r) the conservation of natural resources and the avoidance of waste, whether petroleum or otherwise, of the land to which this Act applies;
- (s) the accounting procedures to be followed and reporting on petroleum operations including the distinction between capital, financial and operating leases;
- (t) the calculation of additional oil entitlement;
- (u) rules for ring fencing;
- (v) the minimum conditions of service for workers engaged in petroleum operations;
- (w) the terms and conditions of petroleum agreements pursuant to subsection (6) of section 19 of this Act;
- (x) the rates or methods of setting the rates at which petroleum and water may be recovered from a well or petroleum reservoir;
- (y) the methods to be used for the measurement of petroleum, water and other substances from a well;
- (z) the pressure maintenance in, or re-pressuring of, a petroleum reservoir and the recycling of petroleum;
- (aa) the terms and conditions under which the Corporation shall undertake the exploration, development and production of petroleum not in association with a contractor pursuant to subsection (3) of section 18 of this Act;
- (bb) the specified areas in which the exercise of rights of a contractor under this Act to carry out petroleum operations shall be restricted;
- (cc) the penalties for offences against the Regulations;
- (dd) local content and local participation;
- (ee) health, safety, environment and welfare of communities in consultation with the Environmental Protection Agency and Ghana Maritime Authority;
- (ff) decommissioning; and
- (gg) in consultation with the Land Valuation Division determine the payment of compensation to owners or occupiers of land where petroleum operations are carried out.

### **Interpretation**

**50.** In this Act unless the context otherwise requires

“additional oil entitlement” has the meaning given to it in section 44;

“affiliate” means a shareholder of a contractor or subcontractor owning 5% or more of the shares in the business of the contractor or subcontractor or an entity which controls, is controlled by or is under common control with, the contractor or subcontractor;

“appraisal” means a programme carried out following a discovery of petroleum for the purpose of delineating the accumulation of petroleum to which that discovery relates in terms of thickness and lateral extent and estimating the quantity of recoverable petroleum therein;

“associated gas” means natural gas produced from a well in association with crude oil;

“Authority” means the Petroleum Regulatory Authority;

“barrel” means a unit volume or unit of crude oil equal to forty-two (42) United States gallons at a temperature of sixty (60) degrees Fahrenheit and at 14.64 psia pressure;

“block” means a license area or contract area that is approximately 685 square kilometres as depicted on the reference map prepared by the Minister in accordance with the provisions of this Act;

“capital or financing lease” means a lease that meets one or more of the following criteria

- (a) lease term is greater than 75% of the economic life of the asset,
- (b) lease contains an option to purchase the asset for less than the fair market value,
- (c) ownership is transferred to the lessee at the end of the lease term,
- (d) present value of the lease payments exceeds 90% of the fair market value;

“carried interest” means an interest held by the Republic in respect of which the contractor pays for the exploration and development costs without any entitlement to reimbursement from the Republic;

“commercial discovery” means the requirement on the part of the contractor to demonstrate to the government that a discovery would be sufficiently profitable for both the contractor and the Republic to merit development;

“communities” includes people living within the area where petroleum operations are being conducted who are likely to be affected by such petroleum operations;

“contract area” means the area covered by the petroleum agreement in which a contractor is authorised to explore for, develop and produce petroleum;

“contractor” means any person, firm, body corporate or other entity which has entered into a petroleum agreement with the Republic and the Corporation pursuant to this Act;

“crude oil” means a mixture of hydrocarbons which are liquid under normal atmospheric conditions and includes condensates and distillates obtained from natural gas;

“decommissioning fund” means a fund established pursuant to section 17 of this Act and the Regulations for the purposes of funding decommissioning activities upon termination of petroleum operations in an area under a relevant petroleum agreement;

“development” includes the building and installation of facilities for the production of petroleum and the drilling of development wells;

“development costs” means petroleum costs incurred in development operations;

“development period” means in respect of each development and production area, the period from the dates of commercial discovery until the date of commencement of commercial production;

“discovery” means petroleum not previously known to have existed, recovered at the surface in a flow measurable by petroleum industry testing methods;

“exploration” means the search for petroleum by geological, geophysical and any other means, and drilling of exploration wells, including appraisal wells and activities connected with them;

“exploration period” means the period commencing on the effective date and continuing during the time within which the contractor is authorised to carry out exploration operations;

“gross production” means the total amount of petroleum produced and saved from a development and production area during production or testing operations which is not used by the contractor in petroleum operations and is available for distribution to the parties according to the petroleum agreement and the relevant legislation;

“land” includes land beneath water, seabed and the subsoil;

“Minister” means Minister responsible for petroleum;

“natural gas” includes hydrocarbons which are gaseous under normal atmospheric conditions and includes wet and dry gas;

“non-associated gas” means natural gas produced from a well other than in association with crude oil;

“petroleum” means crude oil or natural gas or a combination of both;

“petroleum agreement” means an agreement entered into between the Republic, the Corporation and a contractor pursuant to this Act for the exploration, development and production of petroleum by the Corporation in association with the contractor;

“petroleum subcontract” means a contract between the Corporation and a third party or between a contractor and a third party for the provision of services for petroleum operations but does not include a petroleum agreement;

“petroleum operations” means the exploration, development or production of petroleum, transportation and disposal of petroleum;

“petroleum product” means a product derived from petroleum by a refining or treatment process;

“production” means the recovery and disposal of petroleum including development operations and any other works and services connected with them;

“production costs” means petroleum costs incurred in petroleum operations;

“relevant agency” means a Ministry, Department or Agency with an interest in petroleum issues such as the Ministry of Energy, the Environmental Protection Agency and the agency responsible for security;

“royalty” means the Republic’s entitlement to a portion of petroleum produced and saved and not utilised in petroleum operations from each field calculated

as a percentage of gross daily production rates without regard to any prior deductions; and

“subcontractor” means a third party with whom the Corporation or a contractor has entered into a petroleum contract for the provision of services for petroleum operations; and

“third party” includes an entity other than the owner of the shares of the incorporated company at the time of the execution of a relevant petroleum agreement, affiliates, sister and parent companies.

### **Repeal and savings**

51. (1) The Petroleum (Exploration and Production) Act, 1984 (PNDCL. 84) is hereby repealed.

(2) Despite the repeal of PNDCL. 84, the Regulations, bye-laws, notices, orders, directions, appointments or any act lawfully made or done under the repealed enactment and in force immediately before the commencement of this Act shall be considered to have been made or done under this Act and shall continue to have effect until revoked, cancelled or terminated.

### MEMORANDUM

The purpose of this Bill is to revise the Petroleum (Exploration and Production) Act, 1984, PNDCL. 84 to tighten up the existing legal framework taking into account the lessons learnt over the years and modern trends to provide a robust framework for the sector for the exploration, development and production of petroleum.

The Bill is also to create an enabling environment for increased private sector participation and investment in the petroleum sector and to strengthen the regulatory framework for healthy competition and quality assurance.

The legal framework that currently governs the operations of the petroleum industry currently spans the period of two decades. These include the Ghana National Petroleum Corporation Act, 1983 (PNDCL. 64) and the Petroleum Exploration and Production Act, 1984 (PNDCL. 84). Others are the Petroleum Income Tax Act, 1987 (PNDCL. 188) and the Internal Revenue Act, 2000 (Act 592). Other relevant laws are the Ghana Shipping Act, 2003 (Act 645) and the Maritime Security Act, 2004 (Act 675). The Ghana National Petroleum Corporation Model Petroleum Agreement concludes the current legal framework.

*Clause 1 to 3* of the Bill deals with petroleum rights related to petroleum discovered and produced in Ghana.

*Clause 4 to 17* deals with the regulation of petroleum operations. *Clause 18* is on Corporation petroleum operations. *Clause 19 to 28* deals with contractor petroleum operations. *Clause 29 to 39* deals with the rights and obligations of contractors and subcontractors. *Clause 40 to 44* is on fiscal provisions and the final group of clauses from *clause 45 to 51* contains miscellaneous provisions.

*Clause 1* provides for petroleum as property of the Republic. The *clause* vests petroleum existing in its natural state within the jurisdiction of Ghana in the President on behalf and in trust for the people of Ghana subject to any right granted, conferred, acquired, recognised or saved under the Act.

*Clause 2* deals with exploration, development and production of petroleum. A person who intends to explore, develop or produce petroleum is to do so under an agreement. The person is to act in accordance with the terms of a petroleum agreement between that person, the Republic and the Ghana National Petroleum Corporation.

*Clause 3* deals with ownership of petroleum data. The data and information obtained by a contractor or sub-contractor as a result of petroleum operations and the geological, geophysical, technical, financial and economic reports and studies prepared by or on behalf of a contractor or subcontractor in connection with the petroleum operations are the property of the Republic.

*Clause 4* deals with ministerial responsibility. The Minister responsible for petroleum is to regulate petroleum operations.

*Clause 5* is on inspection. The Minister or the Authority is to authorise a person to inspect petroleum operations to ensure that the petroleum operations are carried out in accordance with the provisions of this Act and in accordance with the terms and conditions of any petroleum agreement or petroleum subcontract.

*Clause 6* provides for petroleum operation standards which are to be in conformity with best international practice. An operation under a petroleum agreement or other authority granted under the Act is to be carried out in accordance with the Regulations and best international practice related to the exploration and production of petroleum. Other issues are the prevention of waste of petroleum in order to optimise the ultimate recovery of a petroleum field.

The clause states that practices which include reasonable steps to secure the health, safety and welfare of persons engaged in the operations and the environment in the operational area are to be in accordance with directives given, restrictions imposed or requirements made by the Minister and other relevant agencies.

*Clause 7* deals with request for information. The Minister or the Authority may request a person to provide information in writing within a specified period.

*Clause 8* deals with environmental principles. A contractor or person, who performs a function, discharges a duty or exercises a power under the Act related to exploration, development and production of petroleum resources is to take into account and give effect to the environmental principles prescribed in the Environmental Protection Agency Act 1994, (Act 490) and its subsidiary legislation as well as other relevant legislation.

*Clause 9* provides for the management of blocks. The Minister is to prepare a reference map showing areas of potential petroleum accumulation within the jurisdiction of Ghana divided into numbered areas each of which is described as a block.

The Minister may decide to close certain blocks not covered by a petroleum agreement and may redefine the boundaries of open blocks or give notice of the opening of new blocks in the *Gazette*. There are conditions stipulated in the clause as to the effect of a closure or redefinition of an open block.

*Clause 10* provides for unitisation in circumstances where a petroleum field extends beyond the boundaries of an area covered by a petroleum agreement into another area covered by another petroleum agreement.

*Clause 10* also deals with the development of a petroleum field as a single unit in association with the Corporation where the field extends beyond the boundaries covered by a petroleum agreement into an area not covered by an agreement.

*Clause 11* provides for joint development zones. The Republic is to reach agreement with another country where a petroleum field extends onto the land or continental shelf of another country.

*Clause 12* deals with interference with lawful activities and compensation. Petroleum operations are not to be conducted in respect of a block unless a social and environmental impact assessment and environmental impact management plan as prescribed in the Environmental Protection Agency Act, 1994 (Act 490), the subsidiary legislation under that Act and any other relevant legislation have been approved for the intended operations by the Minister.

*Clause 13* is on notification of petroleum discovery and appraisal. The clause enjoins the Corporation or a contractor to furnish information requested by the Minister and the Authority before making any public announcement and submit periodic reports on exploration carried out under an agreement in accordance with the Regulations.

The *clause* further enjoins the Corporation or a contractor to notify the Minister and the Authority of a petroleum discovery which is made as a result of exploration within a period of thirty days after the date of the discovery. Where it is indicated that the discovery does not merit appraisal, the field is to be relinquished.

*Clause 14* deals with development and decommissioning plans. Where a commercial accumulation is established, it is to be developed by the Corporation or contractor in accordance with Regulations and with the best international techniques and practice. A development plan is to be submitted to the Minister and the Authority in respect of any petroleum field to be developed directly by the Corporation or by a contractor in accordance with the terms of a petroleum agreement and the Regulations. Development operations are not to commence unless the plan has been approved by the Minister.

*Clause 15* deals with annual and long-term production programmes. The Corporation or a contractor is to submit annual and long-term production programmes in respect of a petroleum accumulation to be developed for the approval of the Minister who may direct that the necessary and practical steps be taken to increase or reduce the rate at which petroleum is recovered to the rate that will enhance optimum recovery of petroleum. This is to promote efficiency and prevent unnecessary delays in operational activities that might occur during the approval period of the development plan.

*Clause 16* provides for restoration of affected lands and decommissioning. After the termination of petroleum operations in an area, the Corporation or the contractor is to restore the affected areas and remove causes of damage or danger to the environment in accordance with the Regulations and carry out decommissioning in accordance with the development and decommissioning plan submitted and approved pursuant to the Act.

*Clause 17* provides for a Decommissioning Fund. A Decommissioning Fund is to be established on the date and in the form specified in the petroleum agreement. Money is not to be disbursed from the Decommissioning Fund except in the amount paid in respect of expenditure incurred in relation to decommissioning in accordance with an approved decommissioning plan and to costs of the administration of the Fund.

*Clause 18* deals with the right of the Corporation over blocks. The Corporation is empowered to undertake exploration, development and production of petroleum over the blocks declared by the Minister as open for petroleum operations over which a petroleum agreement does not exist. This however, is subject to the approval of the Minister and in accordance with the Regulations. Any development and production on this type of field in association with a contractor is to be done only if a petroleum agreement is signed with the contractor.

*Clause 19* deals with the validity of a petroleum agreement. A person other than the Corporation who intends to undertake the exploration, development or production of petroleum is to enter into a petroleum agreement with the Republic and the Corporation. The petroleum agreement entered into by the Minister is not effective unless ratified by Parliament in accordance with article 268 of the Constitution.

*Clause 20* provides for a contract area which is the area subject to a petroleum agreement. This area is a block, part of a block or contiguous parts of a number of contiguous blocks not exceeding the agreed limit specified in the petroleum agreement.

*Clause 21* deals with the term of a petroleum agreement. A petroleum agreement is to be valid for a total period not exceeding twenty-five years with an option to extend for a further five years except where the agreement stipulates termination at an earlier time. The agreement is however to terminate seven years after the effective date of the agreement where a commercial discovery of petroleum is not made.

*Clause 22* makes provision for the relinquishment of portions of an area to which the agreement relates in a phased manner. This is after the expiration of each working period specified in the agreement. The area to be retained at the end of the exploration period is to comprise the geological structures for the discoveries of petroleum made in the contract area and is to be of the size and shape that the Minister approves.

*Clause 23* deals with minimum work and expenditure obligations. A petroleum agreement is to provide for minimum work and expenditure obligations to be fulfilled by a contractor during each working period of the exploration period and a contractor who fails to fulfill either in whole or in part these obligations during the exploration period is to pay the estimated cost to the Corporation, to enable the Corporation complete the minimum work and the petroleum agreement is to terminate immediately.

A petroleum agreement is to provide that any natural gas produced in association with crude oil may be used in petroleum operations as agreed between a contractor and the Corporation, but in any event the use is to be in accordance with the Regulations and with good petroleum industry practice and approved production plans. Natural gas produced by a contractor in association with crude oil which is not used in petroleum operations is the property of the Republic. Any natural gas produced by a contractor not in association with crude oil shall be the property of the Republic unless otherwise agreed in the petroleum agreement, clause 24.

Under clause 25, a petroleum agreement is to make provision for the Republic to have an initial interest of at least ten percent carried through exploration and development and have an option to acquire an additional interest which is a paying interest within a specified period of time from the date of declaration of a commercial discovery.

*Clause 26* deals with right of first refusal. A petroleum agreement is to provide that a contractor who decides to dispose of its interest whether in part or in whole is to give the right of first refusal to the Republic to acquire the interest at a fair value.

*Clause 27* provides for transfer of assets to the Corporation. A petroleum agreement is to make provision for the transfer to the Corporation of the physical assets purchased, installed, or constructed by the contractor for petroleum operations and the cost of which has been included in petroleum expenditures. The contractor however, is to have the use of the assets for purposes of operations under a petroleum agreement and remains liable for the maintenance, insurance and other costs associated with the use.

*Clause 28* provides for review of terms and conditions. A review is to be made at any time that a significant change occurs in the circumstances prevailing at the time of the entry into the agreement or the last review of the agreement.

*Clause 29 to 39* deals with rights and obligations of contractors and subcontractors. A contractor or subcontractor is not to assign directly or indirectly, its rights and obligations under a petroleum agreement to a third party without the prior written consent of the Minister whether in whole or in part. The contractor or subcontractor is not to enter into a petroleum subcontract without the prior written consent of the Authority, *clause 29*.

A contractor or subcontractor is to conduct operations with due diligence and efficiency and in accordance with the Regulations and the best international techniques and practice prevailing in the petroleum industry. Others are to conduct operations in a workman-like manner, observe sound engineering and technical practice and use appropriate advanced technology and effective equipment, machinery, methods and materials, *clause 30*.

*Clause 31* is on data and information. A contractor or subcontractor is not to retain or export or permit the retention or export of data or documents without the prior written approval of the Corporation and where the data or documents are exported, the contractor or sub-contractor is to return them to Ghana at the written request of the Corporation.

*Clause 32* deals with guarantees, securities and indemnities. A contractor or subcontractor is to furnish the Minister with the performance bonds and guarantees in an amount determined in accordance with the Regulations and the terms of the petroleum agreement or petroleum subcontract entered into under this Act.

This is to ensure the fulfilment of the obligations undertaken by the contractor or subcontractor or the discharge of liabilities arising out of the petroleum operations. The Corporation is to be indemnified constantly against third party claims arising from the operations of the contractor or subcontractor.

Contractors who jointly hold a petroleum agreement are jointly and severally responsible to the Republic for financial and other obligations arising out of petroleum activities under the agreement.

*Clause 33* is on employment and local content. A contractor or subcontractor is to ensure that opportunities are given as far as is possible for the employment of citizens who have the requisite expertise or qualifications in the various levels of the operations. Other matters dealt with under the clause include the non-engagement in discriminatory practice on grounds of race, nationality or gender in the conditions of service provided for personnel



and the use of goods and services produced or provided in Ghana for petroleum operations in preference to foreign goods and services.

*Clause 34* and *35* deal with technology transfer and incorporation of local company. Under *clause 34*, a contractor or subcontractor is to prepare and implement plans for the transfer to the Corporation of advanced technological know-how and skills related to petroleum operations while carrying out petroleum operations. This provision however, is not to be interpreted to disable the contractor or subcontractor from protecting the competitive position in the petroleum industry.

*Clause 35* enjoins a contractor or subcontractor to incorporate a company in Ghana under the provisions of the Companies Act, 1963 (Act 179) to be authorised to carry out solely petroleum operations. Other obligations are the maintenance of an office or establishment in Ghana to carry out petroleum operations with a representative in charge with full authority to act and enter into binding commitments on behalf of the contractor or subcontractor and to open and maintain an account with a bank in Ghana in respect of each petroleum operation.

*Clause 36* prohibits the direct or indirect assignment of a petroleum agreement by a holder of the agreement to another person without the prior written consent of the Minister.

*Clause 37* on change of ownership prohibits the direct or indirect transfer to a third party of the shares of a contractor's incorporated company in Ghana without the written approval of the Minister if the effect of the transfer is to either give the third party control of the company or enable the third party to take over the interests of a shareholder.

*Clause 38* deals with health, safety and environment. The *clause* enjoins a contractor or subcontractor carrying out petroleum operations to maintain at the work site, an establishment capable of dealing adequately with fire, oil spills, gas leakage, blow-outs, accidents or other emergency situations to prevent or control the situation and to minimise loss or damage from it. The *clause* makes a contractor or subcontractor responsible for any pollution or damage caused by or which results from the operations or petroleum operations undertaken by an agent or employee of the contractor or subcontractor.

The Minister or the Authority is to take necessary measures to ensure safety and recover costs and expenses for doing so from the contractor or subcontractor after giving reasonable notice to the contractor or subcontractor if there is a failure to carry out operations in a safe manner in accordance with the Regulations and with the best international techniques and practice prevailing in the petroleum industry.

*Clause 39* is on the domestic supply requirement. No less than five percent of the contractors entitled petroleum is to be supplied to the domestic market at a negotiated price. The *clause* also stipulates what should happen if there is a shortfall. Where the petroleum available to the Republic is insufficient to fulfil the domestic supply requirements, the contractor together with other contractors engaged in the production of petroleum in Ghana are obliged to supply a volume of petroleum to be used for the domestic supply requirements.

*Clause 40* provides that royalties are to be paid to the Republic in respect of petroleum produced and saved in Ghana. The royalties are to be prescribed and where they are not prescribed, the royalty is to be paid as otherwise provided in accordance with the terms of the petroleum agreement in respect of the area to which the agreement relates.

An annual acreage fee prescribed by the Minister is to be paid to the Republic by a contractor, *clause 41*. *Clause 42* enjoins a contractor to pay taxes which include petroleum income tax and capital gains tax in accordance with the relevant laws. Other matters dealt with under the *clause* include provision for the financing of petroleum operations with loans from a third party and the interest rate for these loans which are not to exceed the lowest market interest rates available for these loans. This clause is to enable the monitoring of the cost of financing of loans contracted and to reduce the potential for the country to have its entire benefit from petroleum resources eroded through cost recovery. *Clauses 43 and 44* deal with bonus payments and additional oil entitlement.

*Clause 45 to 51* are on the miscellaneous provisions. *Clause 45* deals with transactions between contractor and affiliates. *Clause 46* on auditing provides that an auditor appointed by the Minister or the Authority or a person authorised by the Minister or Authority has the right to inspect, test and audit the works, equipment, operations and financial books of account, records and registers related to the petroleum operations performed by a contractor or subcontractor and make abstracts or copies of any document pertaining to the operations.

*Clause 47* is on offences and penalties. The clause prohibits the undertaking of petroleum operations otherwise than in accordance with this Act, the unlawful interference with or obstruction of the Corporation, a contractor or subcontractor, their agents or employees in the exercise of a right under this Act and the wilful obstruction, hindrance or assault of a person in the exercise of a right, power or performance of a function under this Act. A contravention attracts a fine not exceeding ten thousand penalty units and where the offence continues to a fine not exceeding one thousand penalty units for each day during which the offence continues or to a term of imprisonment not exceeding twelve months or to both the fine and the imprisonment.

Other offences include engaging in the exploration, development or production of petroleum without a petroleum agreement which attracts a fine not exceeding one hundred thousand penalty units or a term of imprisonment not exceeding five years or to both and the direct or indirect assignment of a petroleum agreement either in whole or in part without the prior consent of the Minister.

*Clause 48* deals with the interim role of the Ministry pending the establishment of the Authority. A reference to Authority in the Act is to be construed as a reference to the Ministry of Energy.

*Clause 49* empowers the Minister to provide for Regulations for the effective implementation of the Act among others. Some of the matters for regulations include ensuring the safe construction, maintenance and operation of installations, facilities and equipment used in connection with petroleum operations. Others relate to the identification of installations and facilities used in connection with petroleum operations, the health, safety and welfare of persons employed in petroleum operations and the inspection of areas in which petroleum operations are being carried out as well as the plant, machinery and equipment within those areas.

*Clause 50* deals with interpretation whilst *clause 51* is on repeals and savings.

*Clause 51* repeals the Petroleum (Exploration and Production) Act 1984 (PNDCL. 84) but saves regulations, bye-laws, notices, orders, directions, appointments or any act lawfully made or done under the repealed enactment.

DR. JOE OTENG ADJEI  
Minister for Energy

Date: *2nd July, 2010.*