

WEST AFRICAN GAS PIPELINE ACT, 2004 (ACT 681)

ARRANGEMENT OF SECTIONS

Section

PART I—GENERAL

1. Powers of West African Gas Pipeline (WAGP) Authority
2. Compliance with the Treaty, Act and Regulations
3. Funding of the WAGP Authority
4. Company authorised to carry out Project

PART II—CORPORATE MATTERS

5. Company to be registered as external company
6. Application of Chapter V of the Companies Code
7. Keeping of accounts and submission of reports
8. Registration of mortgages, charges and other interests

PART III—LICENSING

9. Pipeline licence
10. Conditions of a pipeline licence
11. Period of a pipeline licence
12. Rights of a pipeline licence holder
13. Compensation
14. Transfer and pledge of pipeline licence
15. Suspension or Revocation of Pipeline Licence
16. Public Notice Regulations
17. Approval to operate
18. Electricity generation
19. Telecommunications
20. Prohibition on other persons
21. No other licence or permit for construction
22. Transport, export or import licence
23. Acquisition and shipment of natural gas
24. Offer for sale, promotion and delivery

25. National emergency

PART IV—WAGP REGULATIONS

26. Power of Minister to make WAGP Regulations

27. Administration and enforcement

28. Exclusive regulation of matters in section 26

29. Power to amend Regulations

PART V^{isic}—FINANCIAL MATTERS

30. Agreed Fiscal Regime

31. Foreign Currency Arrangements

PART VI—VOLTA RIVER AUTHORITY

32. Additional functions of the Volta River Authority

33. Payments

34. Payment into public funds of monies due Government

35. Security

36. Guarantee

PART VII—ENVIRONMENTAL MATTERS

37. Responsibility for environmental damage

PART VIII—MISCELLANEOUS PROVISIONS

38. Access Code

39. Competition

40. Ownership of Pipeline System

41. Insurance

42. Disapplications of existing laws

43. Definitions

44. Transitional Provisions

SCHEDULES

Schedule 1—Functions of the WAGP Authority

Schedule 2—Agreed fiscal regime

Part 1—Introduction

Part 2—Income Tax

Part 3—VAT

Part 4—Customs duties

Part 5—Other Taxes

Part 6—Penalties

Part 7—Appeals



REPUBLIC OF GHANA

**THE SIX HUNDRED AND EIGHTY-FIRST
ACT
OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED
WEST AFRICAN GAS PIPELINE ACT, 2004**

AN ACT to incorporate the Treaty on the West African Gas Pipeline Project and certain provisions of the International Project Agreement in respect of the proposed West African Gas Pipeline into the domestic law and to provide for related matters.

DATE OF ASSENT: 1st December, 2004.

BE IT ENACTED by Parliament as follows:

PART I—GENERAL

Section 1—Powers of West African Gas Pipeline (WAGP) Authority

The West African Gas Pipeline (WAGP) Authority established pursuant to the WAGP Treaty has the Power and authority in accordance with the WAGP Treaty and the International project Agreement

- (a) to perform the functions assigned to it under the WAGP Treaty as specified in Schedule 1 to this Act;
- (b) to monitor compliance by the Company with the WAGP Regulations made under this Act; and
- (c) to exercise the powers conferred on it under the WAGP Regulations made under this Act.

Section 2—Compliance with the Treaty, Act and Regulations

(1) The Company, Ghana, a buyer, a seller and a shipper shall comply with the provisions of the Treaty, this Act and Regulations made under this Act.

Section 3—Funding of WAGP Authority

The Government shall provide for the WAGP Authority such funds required of it under the WAGP Treaty and the International Project Agreement as are necessary to support the activities of the WAGP Authority.

Section 4—Company Authorised to Carry out Project

The Company is authorised to carry out the West African Gas Pipeline Project subject to the Constitution and the provisions of this Act.

PART II—CORPORATE MATTERS

Section 5—Company to be Registered as External Company

The Company shall register as an external company in accordance with section 303 of the Companies Code, 1963 (Act 179).

Section 6—Application of Chapter V of the Companies Code

In pursuance of section 5 and subject to the other provisions of this Part, the provisions of Chapter V of the Companies Code shall apply to the Company.

Section 7—Keeping of Accounts and Submission of Reports

(1) The Company, and its branches, places of business or subsidiaries in Ghana may keep bank accounts in such currencies as it considers appropriate.

(2) The Company or a subsidiary of the Company registered in Ghana when preparing any financial report required to be submitted by the Company or the subsidiary to an authority in Ghana may prepare the report in US dollars.

(3) All financial reports required to be submitted by the Company or a subsidiary to an authority in Ghana shall be prepared in accordance with Accounting Principles.

(4) The Company has an obligation to prepare, maintain and file financial reports in respect of any branch, subsidiary or place of business of the Company in Ghana.

(5) Notwithstanding the other provisions of this section, the Company in filing any financial reports, shall file the report in respect of the whole of its business undertaking in respect of the Project.

Section 8—Registration of Mortgages, Charges and other Interests

Where the Company creates a mortgage, charge or other security interest over property situated in Ghana, the Company or the holder of the security Interest shall register the mortgage, charge or interest with the Registrar General, or with any other appropriate registry in the same manner as a company incorporated in Ghana.

PART III—LICENSING

Section 9—Pipeline Licence

(1) A person shall not construct or operate any pipeline which is part of the pipeline system unless that person has been granted a licence under this Part by the Minister or a person so authorised by the Minister.

(2) The Company may apply under this Part for a licence to construct, operate and maintain the pipeline system or part of the pipeline system in respect of any area or locality of Ghana including any section of the seabed offshore Ghana.

(3) Upon the grant of a licence under this Part, the holder is authorized to construct, operate and maintain that part of the pipeline system to which the licence relate.

(4) The holder of the licence granted under this Part shall construct, operate and maintain the pipeline system in accordance with the approved pipeline development plan.

(5) An application for the grant of a licence under this Part shall

(a) be made in writing to the Minister;

(b) be made by a body corporate and shall list the names of the directors and executive officers of the body corporate; and

(c) include the pipeline development plan which shall be in accordance with the International Project Agreement and which shall specify conditions to which the licence is subject.

(6) The Minister shall within seven working days after receiving an under subsection (5) cause the application together with the pipeline development plan to be processed.

(7) The Minister shall, if the pipeline development plan is approved by the WAGP Authority, issue the pipeline licence within twenty-one working days after receipt of the application.

Section 10—Conditions of a Pipeline Licence

(1) A pipeline licence granted under this Part shall be subject only to the conditions set out in respect of the licence in the approved pipeline development plan.

(2) The Minister shall in accordance with modifications agreed in the approved pipeline development plan modify the terms and conditions of a licence granted under this Act.

Section 11—Period of a Pipeline Licence

A pipeline licence granted under this Part shall be for an initial period of twenty-five years and may be renewed by the Minister upon application by the Company for further periods of ten years each at a time.

Section 12—Rights of a Pipeline Licence holder

(1) Subject to the provisions of the Constitution and this Act, a licence granted under this Part shall confer on the holder

(a) the right to enter upon land or seabed, take possession of and use the right of way on the land or seabed and to construct, maintain and operate the pipeline system, on the right of way, but where a situation of emergency requires immediate access to the land or seabed, prior to accessing the relevant part of the right of way, the Company shall give reasonable notice of the access;

(i) where the relevant part of the right of way is privately owned or occupied, to the owner or occupier; and

(ii) where the relevant part of the right of way is public land, to the appropriate regional or national Lands Commission as the case may be.

(b) the right to design, construct, test, commission maintain, service, operate and otherwise commercially use and subject to section 13 (1) dispose of the pipeline system;

(c) the right to construct, maintain and operate on the right of way all other installations that are ancillary to the construction, maintenance and operation of the pipeline system, including roadways, fibre optic cables, electric power cables, compression stations, storage facilities and such other ancillary installations as are specified in the approved pipeline development plan;

(d) the right to dig, clear, embank and backfill, for the purpose of constructing the pipeline system any gravel, sand clay, stone, or other similar substance, which is not a precious mineral or precious or semi-precious stone, within any land in the area which is the subject of the licence without any restrictions;

(e) the right to cut and remove trees and topsoil and other natural obstacles on or under the right of way without any restrictions;

(f) the right to use and redirect groundwater and streams under the right of way;

(g) the right to cross and encroach on any roadways waterways, water distribution or sewage pipes, telephone cables, electric power cables and other public utility corridors;

(h) the right to conduct clearing and grubbing, bedding, drilling, caving trenching, tunneling, heaving, banking, levelling, bridging works and other works necessary for the construction, operation and maintenance of the pipeline system;

(i) the right to perform hydrostatic tests and to discharge test waters;

(j) the right of temporary access onto and occupation of any land outside the right of way as may be necessary according to the approved pipeline development plan or as otherwise approved by the WAGP Authority to construct, make safe, repair and replace the pipeline system; and

(k) the right to establish during construction, testing, commissioning or maintenance of the pipeline system a safety zone around the area of the construction or maintenance works within which any third party not authorized by the holder of the pipeline licence or by the WAGP Authority in accordance with the WAGP Regulations shall be prohibited from,

(i) accessing or occupying the area of the construction, testing, commissioning or maintenance works,

(ii) engaging in any action, works, boring or excavation in, or on, the safety zone which may be prejudicial to the construction, testing, commissioning, operation or maintenance of the pipeline system.

(2) The pipeline licence and the rights of its holder and of the project contractors under the pipeline licence and all other project authorization shall be effective against administrative authorities and third parties.

Section 13—Compensation

(1) The Company shall pay to any affected legitimate land owners or lawful occupiers of land entered pursuant to the exercise of the rights of the licence holder under section 12, fair compensation for disturbance or damage caused by the activities of the Company or project contractors on such land.

(2) The principles and procedures for quantifying the amount of such compensation (together with procedures for resolving any disputes in respect of such compensation) shall be those applying under the prevailing laws of Ghana.

Section 14—Transfer and Pledge of Pipeline Licence

(1) A licence granted under this Part may only be transferred with the prior written consent of the Minister.

(2) The consent of the Minister to a transfer of the pipeline licence shall be subject only to the prior submission by the holder of the pipeline licence of appropriate evidence that the transferee is technically and financially capable of ensuring compliance with the conditions of and obligations under the pipeline licence.

(3) A licence granted under this Part may be mortgaged or pledged by the licence holder as security for its obligations in respect of the Project.

(4) A transfer of, or the creation of any other interest in the pipeline shall be subject to the consent of the Minister in accordance with subsection (1)

(5) The transfer of a licence granted under this Part whether pursuant to the enforcement of a mortgage, a pledge or otherwise, shall upon the granting of the consent of the Minister in accordance with subsection (1) transfer the rights that go with the licence to the holder of the licence.

Section 15—Suspension or Revocation of Pipeline Licence

(1) Where the holder of a licence granted under this Part abandons the pipeline system or materially breaches a condition to which the licence is subject, the Minister may

(a) suspend the licence; or

(b) revoke the licence.

(2) Where the Minister considers that there is a valid reason for suspension or revocation of the licence pursuant to subsection (1), the Minister shall serve on the holder of the licence a notice of default.

(3) The notice of default shall

(a) specify the default;

(b) where the default can be remedied, request the holder of the licence to remedy the default within a time specified in the notice; and

(c) where the default cannot be remedied, state the action that the Minister proposes to take, the date on which the action is proposed to be taken and the reason for the proposed action.

(4) The Minister shall, prior to taking any action specified in the notice of default, give the holder of the licence a fair opportunity to respond to the notice of default and to give reason why the proposed action should not be taken.

(5) Where the holder of a licence is given an opportunity to remedy a default under subsection (3),

(a) the licence shall not be suspended or revoked if the holder remedies the default to the satisfaction of the Minister within the specified time;

(b) the licence shall be revoked if the holder fails within the time specified in the notice to remedy the default to the satisfaction of the Minister.

(6) Where a licence is revoked the holder of the licence shall forfeit all rights conferred under the licence.

(7) The holder of a licence who is dissatisfied with the decision of the Minister to suspend or revoke a licence may invoke the dispute resolution procedure provided in the International Project Agreement.

Section 16—Public Notice of Licence

The Minister shall cause to be published in the Gazette a copy of the pipeline licence and any notice of the grant, renewal, amendment, suspension or revocation of the pipeline licence.

Section 17—Approval to Operate

(1) The Company shall not commence the commissioning or operation of the pipeline system, or any newly installed part of it without an approval to operate given by the WAGP Authority.

(2) The WAGP Authority shall grant an approval to operate if is satisfied that the Company has satisfied all the requirements for such an approval.

(3) The Company and the WAGP Authority shall follow laid down procedures for applying for and processing an application for an approval to operate.

Section 18—Electricity Generation

The Company may for the purposes of the pipelines system construct, own and operate electricity generating plant as set out in the approved pipeline development plan.

Section 19—Telecommunications

The Company may in accordance with the provisions of the National Communications Authority Act 1996 (Act 524) and notwithstanding section 10 of that Act, for the purposes of the pipeline system, construct, own and operate, such communication facilities as are set out in the approved pipeline development plan.

Section 20—Prohibition on other Persons

(1) A person who is not authorized by the holder of a pipeline licence or by the WAGP Authority in accordance with the WAGP Regulations shall not

(a) access or occupy the area of a safety zone established by the Company during construction, testing, commissioning or maintenance of the pipeline system; or

(b) engage in any action, works, boring or excavation in, or on the safety zone or the area of the right of way which may be prejudicial to the construction, testing, commissioning, operation or maintenance of the pipeline system.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of not less than 50 penalty units or imprisonment for a term of not less than months or both.

Section 21—No other Licence or Permit for Construction

Except as set out in this Part, no other licence or permit or authorization is required by the Company or any project contractor for the construction, operation and maintenance of the pipeline system.

Section 22—Transport, Export or Import Licence

Except as required under section 9, no transit, export or import permit, licence or other authorization is required by the Company, a buyer, a seller or a shipper for,

- (a) the export of natural gas from Ghana by means of the pipeline system; or
- (b) the transit of natural gas through Ghana by means of the pipeline system; or
- (c) the import of natural gas into Ghana by means of the pipeline system.

Section 23—Acquisition and Shipment of Natural Gas

A person is not required to obtain any permit, licence or other authorisation

- (a) to acquire natural gas in Ghana for transmission through the pipeline system;
- (b) to ship natural gas through the pipeline system; or
- (c) to ship natural gas through other pipeline facilities to the pipeline system,

but a person who constructs or operates any facility for the transportation or storage of natural gas shall not be relieved by virtue of this section of any obligation that person may have under any other law to obtain a licence or permit in respect of the facility.

Section 24—Offer for sale, Promotion and Delivery

Any person who in Ghana, either on its own behalf or on behalf of another person

- (a) offers for sale or promotes the sale of or sells natural gas to be transported through the pipeline system; or
- (b) delivers gas through the pipeline system

is not required to obtain any licence or permit by reason only of that offer, promotion, sale or delivery, but a person who constructs or operates any facility for the transportation or storage of natural gas shall not be relieved by virtue of this section of any obligation that person may have under any other law to obtain a licence or permit in respect of the facility.

Section 25—National Emergency

(1) The transmission of natural gas through Ghana or across its territorial boundaries shall not be restricted by Ghana or any of its agencies other than in the event: of a national emergency declared by Parliament in accordance with the Constitution and of relevance to the Project.

(2) Upon the cessation of the national emergency, any restrictions placed on the transmission of natural gas through Ghana or across its territorial boundaries shall cease.

PART IV—WAGP REGULATIONS

Section 26—Power of Minister to make WAGP Regulations

(1) The Minister on the recommendation of the WAGP Authority, may by legislative instrument make Regulations governing the following:

(a) standards and procedures for the design and construction of the pipeline system incorporating the agreed design standards;

(b) standards and procedures for the testing and commissioning of the pipeline system incorporating the agreed design standards;

(c) standards and procedures for the operation and maintenance of the pipeline system including repair, testing and checking of the pipeline system, internal and external corrosion, incorporating the agreed design standards;

(d) standards and procedures for measurement to be used in the pipeline system;

(e) health and safety requirements and practices for the pipeline system;

(f) environmental operating requirements, including handling of leaks and discharges;

(g) qualifications and experience required for operating personnel and companies;

(h) requirements for periodic reporting to the WAGP Authority;

(i) rights of inspection to be granted to the WAGP Authority;

(j) a regime providing for the imposition of penalties on the company;

(k) procedures to deal with an emergency situation including the circumstances in, which the Company may be required to suspend its operations for reason of risk to health, safety or the environment;

(l) procedures for the termination and resumption of operation of the pipeline system including procedures for abandonment;

(m) the extent not included in the Rules of Procedure, procedures for the conduct of hearings of the WAGP Authority, where appropriate, under the WAGP Regulations;

(n) the extent not included in the Rules of Procedure, procedures for review by the Fiscal Review Board, appeals to the WAGP Tribunal, and review by the Committee of Ministers in accordance with the WAGP Treaty;

(o) all drawings, plans, designs and other technical documents made or prepared by the Company for the purposes of the Project, and any plans for the fabrication or construction of the pipeline system, which have been approved by the Steering Committee or its delegates prior

to the establishment and empowerment of the WAGP Authority shall be deemed to have been duly approved by the WAGP Authority;

(p) for all actions taken in accordance with this Act by the Steering Committee or its delegates prior to the establishment and empowerment of the WAGP Authority which are functions of the WAGP Authority, to be deemed to have been duly taken by the WAGP Authority;

(q) for any drawings, plans, designs and other technical documents made or prepared by the Company for the purposes of the Project, and any plans for the fabrication or construction of the pipeline system, which have been approved or deemed approved by the WAGP Authority or its delegates to be deemed to have been approved under the WAGP Regulations upon their entry into force; and

(r) for all actions taken by the WAGP Authority or deemed to have been so taken which are actions provided for in the WAGP Regulations, to be deemed to have been duly taken under the WAGP Regulations upon their entry into force.

(2) The WAGP Regulations and any amendments to the WAGP Regulations, shall be consistent with,

(a) the WAGP Treaty and this Act; and

(b) similar Regulations adopted in Benin, Nigeria and Togo.

(3) The WAGP Regulations shall not govern the environmental standards to be applied to the pipeline system and implemented in the construction and operation of the pipeline system, or the procedures for obtaining environmental approvals, which standards and procedures shall be subject to the prevailing environmental legislation of Ghana.

Section 27—Administration and Enforcement

The WAGP Authority has the exclusive authority, acting in collaboration with such agencies as are necessary, to administer and enforce the WAGP Regulations.

Section 28—Exclusive Regulation of Matters in Section 26

In respect of the subject matter specified in section 26(1), the pipeline system and the Company shall subject to the Constitution, be regulated in Ghana exclusively by this Act and the WAGP Regulations to the exclusion of any other laws or regulations that would otherwise apply to the pipeline system and the Company in respect of that subject matter.

Section 29—Power to Amend Regulations

The Minister may by legislative instrument amend the Regulations provided that the amendment is consistent with this Act and with the obligations of Ghana under the WAGP Treaty.

PART VI—FINANCIAL MATTERS

Section 30—Agreed Fiscal Regime

(1) The liability for, and the calculation of, and method of assessment of, tax on the Company and each WAGP Company in relation to WAGP income shall be in accordance with the principles and rules set out in Schedule 2 to this Act.

(2) The Non-WAGP Regime shall not apply to any WAGP Company in respect of WAGP activities or WAGP income except as set out in Schedule 2 to this Act.

(3) The principles and rules relating to the liability for, and the calculation of, tax in Schedule 2 to this Act shall also apply to buyers, sellers, shippers and project contractors to the extent specified in Schedule 2 to this Act.

(4) The Non-WACP Regime that applies to buyers, sellers, shippers and project contractors in respect of their activities under Schedule 2 to this Act shall be modified in accordance with that Schedule.

Section 31—Foreign Currency Arrangements

(1) Each of the WAGP companies, the shareholders, the project contractors, the buyers, the sellers and the shippers, and their counter parties, may solely in connection with the Project or the transportation of natural gas in, and the sale of natural gas transported or to be transported through, the pipeline system, or the provision of security for their obligations under agreements relating to the Project,

(a) open, maintain and operate bank accounts in foreign currency both inside and outside Ghana and receive payments of any kind including without limitation revenues in connection with the sale or transportation of natural gas directly into the accounts and retain the proceeds in and make payments from the accounts as it thinks fit;

(b) transfer foreign currency into Ghana;

(c) purchase local currency at the prevailing inter-bank exchange rate or at any other rate approved by the Bank of Ghana;

(d) convert local currency earned from participation in a business related to the operation of the pipeline system into foreign currency at the prevailing inter-bank exchange rate or at any other rate approved by the Bank of Ghana;

(e) transfer, export and hold foreign currency outside of Ghana;

(f) obtain and use letters of credit in foreign currency;

(g) except in respect of costs incurred in Ghana to suppliers of goods or services who are residents of Ghana which shall be paid in Ghanaian cedis, utilize foreign currency in Ghana without restriction;

(h) pay in foreign currency all salaries, allowances and other benefits due to any of their employees in connection with or relating to the Project, other than employees who are residents of Ghana and who are engaged to perform their duties only in Ghana.

(i) pay in foreign currency any amounts due to foreign contractors, shareholders or lenders in connection with the Project;

(j) make any other payments due in connection with or relating to the Project in foreign currency or in cedi equivalent; and

(k) enter into contracts with each other for services or for the sale of goods, and to make payment for such goods or services, in any foreign currency.

- (2) To the extent that the following are not included in subsection (1) the Company may;
- (a) borrow money or raise equity in foreign currency from any source without the requirement for any further approval, consent or administrative act of the Government or any State Authority;
 - (b) remit to shareholders located outside of Ghana any dividend derived from the Company or any affiliate of the Company in Ghana or return share capital without any deduction, withholding or other cost, in each case without the requirement for any further approval, consent or administrative act of the Government or any State Authority;
 - (c) grant security over any property of the Company or any affiliate of the Company in Ghana or elsewhere to lenders or other creditors or potential creditors, including balances in local and foreign currency bank accounts established onshore or offshore;
 - (d) service or repay foreign loans and pay associated fees and indemnities in any currency without being subject to any tax or withholding tax obligation or deduction unless otherwise provided under this Act; and
 - (e) remit to its lenders any principal, interest, fees or other lending costs owed or payable by the Company or any affiliate of the Company in Ghana without any deduction, withholding tax or other cost unless otherwise provided for under this Act.
- (3) The provisions of this section do not relieve the Company from filing returns on its foreign exchange as may be required by the Bank of Ghana.

PART VI—VOLTA RIVER AUTHORITY

Section 32—Additional functions of the Volta River Authority

In addition to its functions and duties listed in Part II of the Volta River Development Act, 1961 (Act 46), the Volta River Authority may either in its own right or through its subsidiaries enter into, and perform the obligations undertaken by it in any agreement relating to the Project to which it is a party.

Section 33—Payments

The Volta River Authority may in connection with the Project or the transportation of natural gas in, and the sale of natural gas transported or to be transported through, the pipeline system, or the provision of security in accordance with Ghana's obligations under agreements in respect of the Project,

- (a) pay shippers or sellers of natural gas transported or to be transported in the pipeline system offshore in foreign currency; and
- (b) issue letters of credit in foreign currency.

Section 34—Payment into Public Funds of Monies due Government

Any dividend, distribution or other monies due Government

- (a) from any investments made by Government in the Project, and
- (b) held on behalf of, or in trust for Government by VRA, any other person or body,

shall be paid by VRA, other person or body into the Consolidated Fund, or such other public account as may be directed by the Minister for Finance.

Section 35—Security

(1) In addition to the provisions of section 22(3) of the Volta River Development Act 1961 (Act 46), the Volta River Authority may charge any of its assets related to the Project, and revenues as security for the performance of its payment obligations under any agreement relating to the Project to which it is a party and may do all other things necessary for or incidental to the creation of the security.

(2) Any charge created under subsection (1) shall be registered with the Registrar General.

Section 36—Guarantee

(1) The Minister for Finance may on behalf of Ghana, in writing guarantee the performance by the Volta River Authority of its obligations under any agreement relating to the Project to which it is a party.

(2) Moneys payable under a guarantee made by the Minister under subsection (1) may be paid from to the Consolidated Fund.

PART VII—ENVIRONMENTAL MATTERS

Section 37—Responsibility for Environmental damage

(1) Subject to the other provisions of this section, the Company its shareholders, the shareholders' affiliates, a buyer, seller shipper, project contractors and any other person engaged in activities relating to the Project shall be liable for any environmental damage caused by the activities in accordance with the laws of Ghana.

(2) A person shall not be liable under subsection (1) for any environmental damage that was not caused by or through the Project activities.

(3) Any environmental damage or other circumstances identified in the Environmental Impact Assessment as existing prior to the Construction Commitment Date shall be conclusively deemed to have existed prior to the commencement of the Project activities and not to have been caused by the Company, the shareholders, the shareholders' affiliates, or the Project contractors.

(4) A buyer, seller or shipper is not liable for any environmental damage that was not caused by its activities.

PART VIII—MISCELLANEOUS PROVISIONS

Section 38—Access Code

The Minister may, upon receipt of a copy of a notice from the WAGP Authority to the Company relating to a failure of the Company to comply with the Access Code make Regulations requiring the Company to comply with the provisions of the Access Code.

Section 39—Competition

(1) Subject to subsection (2), none of the following shall constitute a breach of any law prohibiting or restricting any person from acting in concert or combination in relation to competition in a market or the fixing of prices:

(a) the entry into the International Project Agreement by the Company or the performance of its obligations under the International Project Agreement;

(b) the acquisition of natural gas in a State by a buyer or shipper for transmission through the pipeline system or the shipping of natural gas through the pipeline system, or through other pipeline facilities to the pipeline system, by a buyer or shipper;

(c) the offer for sale or sale of natural gas in a State by a shipper or seller which is delivered out of the pipeline system, or the delivery of natural gas into a State through the pipeline system by a shipper or seller;

(d) the formation of the Company by the shareholders; or

(e) the formation of a buyer or seller or shipper by shareholders or members of any group or consortium.

(2) Except in relation to conduct specifically mentioned in the International Project Agreement or the Access Code, subsection (1) does not permit or authorise,

(a) unreasonable discrimination against buyers or shippers; or

(b) conduct by the Company, a buyer, a seller or a shipper which constitutes unfair discrimination, a lessening of competition, or which would otherwise be regarded under competition law as an abuse of a dominant market position.

Section 40—Ownership of Pipeline System

(1) The pipeline system when placed in the sea, under or over land, in accordance with the terms of the pipeline licence, shall remain the property of the Company, notwithstanding any suspension, termination, cancellation or expiry of the pipeline licence.

(2) A third party may not acquire an ownership interest in the pipeline system by virtue of that third party having an interest in the sea or under or over land where the pipeline system is situated.

Section 41—Insurance

Notwithstanding anything to the contrary contained in any law or enactment:

(a) a WAGP Company shall arrange insurance coverage for its activities in any country of its choice; and

(b) a shipper shall arrange any insurance coverage for its Project activities in a country of its choice.

Section 42—Disapplications of Existing Laws

(1) The following laws shall not apply to the WAGP Company, a buyer, a seller, a shipper or a project contractor in respect of the Project:

(a) the Energy Commission Act, 1997 (Act 541) and any Regulations made under that Act;

(b) the Ghana Investment Promotion Centre Act, 1994 (Act 478); and

(c) subject to section 33(3), the Exchange Control Act, 1961 and any Regulations made under that Act.

(2) To the extent that the provisions of this Act are inconsistent with the provisions of any other law of Ghana other than the Constitution, the provisions of this act shall prevail.

Section 43—Definitions

In this Act, unless the context otherwise requires:

"Access Code" means the Access Code agreed by the Company and the WAGP Authority in accordance with clause 26 of the International Project Agreement as it may be amended from time to time by agreement between the Company and the WAGP Authority;

"Accounting Principles" means principles for accounting which are in accordance with international accounting standards, on an accrual (as opposed to cash) basis unless otherwise specifically provided in the International Project Agreement, with revenues attributed to the accounting period in which they are earned, and costs and expenses to the accounting period in which they are incurred without the need to consider when the amount is received or disbursed in connection with a particular transaction, and costs and expenses deemed to have been incurred, in the case of physical items, in the accounting period when title passes, and in the case of services, in the accounting period when such services are performed;

"administrative fees" means any fees, charges or other imposts which are imposed or charged for services, materials or rights provided or granted by any Ghana or State Authority;

"affiliate" means, with respect to a person, any other person (or two or more persons acting together) that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with that person, or who possesses or possess, directly or indirectly, the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract, by law or otherwise;

"agreed design standards" means the standards for the construction, operation and maintenance of the pipeline system which are agreed in the International Project Agreement;

"approval to operate" means an approval to operate the Pipeline System given by the WAGP Authority to the Company in accordance with section 17;

"approved pipeline development plan" means the pipeline development plan which is approved by the WAGP Authority in accordance with the International Project Agreement, as it may be amended from time to time by agreement between the Company and the WAGP Authority;

"approved tariff methodology" means the methodology for setting tariffs for transportation of natural gas in the pipeline system which is agreed from time to time by the Company and the WAGP Authority;

"buyers" means purchasers of the natural gas which has been or is to be transported through the pipeline system;

"commercial agreement's means the gas purchase agreements, gas sales agreements, gas transportation agreements, interconnection agreements and credit security agreements defined as "Commercial Agreements" in the International Project Agreement;

"Committee of Ministers" means the committee established in accordance with Article X.1 of the WAGP Treaty;

"Company" means the West African Gas Pipeline Company Limited (WAGP Company) and includes its successors;

"Constitution" means the Constitution of the Republic of Ghana;

"debt" means any actual obligation (whether present or future, secured or unsecured) for the payment or repayment of money (excluding contingent liabilities, amounts owing to trade creditors, and other liabilities incurred in the ordinary course of business);

"Exempt Goods List" means the list agreed by the Company and the WAGP Authority in accordance with clause 29.13 of the International Project Agreement, and includes any amendments to that list agreed from time to time;

"fiscal laws" means laws in force in Ghana which apply in respect of the Project and governing the fiscal topics addressed in the Agreed Fiscal Regime (including, to the extent applicable, this Act);

"Fiscal Review Board" means the Fiscal Review Board established in accordance with the WAGP Treaty;

"foreign currency" means any freely convertible currency, including US dollars, that is the lawful currency of a state other than the currency of Ghana;

"gas transportation agreement" means an agreement between a person and the Company for the transportation of natural gas through the pipeline system by the Company on behalf of that person,

"Ghana" means either the Republic of Ghana or the territory of the Republic of Ghana;

"Government" means the Government of Ghana;

"Interest" includes all forms of return in respect of a debt claim (other than repayment of the debt), including, for the avoidance of doubt, discounts, fees and charges;

"International Project Agreement" means the International Project Agreement dated 22nd May, 2003 between the Republic of Benin, the Republic of Ghana, the Federal Republic of Nigeria, the Republic of Togo and the West African Gas Pipeline Company Limited Concerning the West African Gas Pipeline Project as may be amended from time to time;

"Minister" means the Minister for the time being charged with responsibility for energy;

"natural gas" means any hydrocarbons (or a mixture of hydrocarbons and other gases) which at a temperature of 60 degrees Fahrenheit and at atmospheric pressure are predominantly in a gaseous state;

"pipeline development plan" means the development plan for the pipeline system prepared in accordance with the International Project Agreement;

"pipeline licence" means a licence to construct, operate and maintain the pipeline system granted pursuant to Part III of this Act;

"pipeline system" means a natural gas pipeline running from the Alagbado tee junction in the Escravo-Lagos Pipeline System (ELPS) near Lagos, Nigeria, through Benin and Togo, to a terminus initially near Takoradi, Ghana, to be developed, built, operated and maintained by the Company under the terms of the International Project Agreement together with ancillary permanent facilities which are needed for the construction and operation thereof (including compression stations, metering stations, valve stations, lateral pipelines to and interconnection points to Cotonou, Lome and Tema, pig launching and receiving stations and Supervisory Control and Data Acquisition Systems (SCADA)), and includes any extension or expansion of these;

"project" means the development of specifications, feasibility and market studies, design, financing, construction, ownership, operation and maintenance of the pipeline system;

"project activities" means activities undertaken within one or more of the States by a WAGP Company, the shareholders or the project contractors in connection with the implementation of the Project;

"project authorisations" means all rights, permits, licences, consents, permissions, exemptions and approvals (including those identified in detail in the approved pipeline development plan) which are needed by a WAGP Company or a project contractor for the successful implementation of the Project, or to fulfil commitments made under the commercial agreements or for the exercise of any of the rights of the Company under the International Project Agreement, and includes the pipeline licences;

"project contractors" means any contractors, sub-contractors, advisers or agents of the Company engaged in connection with the implementation of the Project;

"project rights" means all of the rights, entitlements and benefits conferred on the Company by the International Project Agreement, including the right of the Company to be issued the project authorisations and to implement the Project in accordance with the terms of the International Project Agreement;

"right of way" means a strip of land or seabed or subsoil of a width specified in the approved pipeline development plan either side of the route specified in the approved pipeline development plan;

"Rules of Procedure" means the rules of procedure to be established by the Minister in accordance with Article VI of the WAGP Treaty;

"sellers" means the sellers of natural gas which has been or is to be transported through all or part of the pipeline system;

"shareholders" means

(a) the affiliate of Chevron Nigeria Limited that holds shares in the Company;

(b) the affiliate of the Shell Petroleum Development Company of Nigeria Limited that holds shares in the Company;

(c) Nigerian National Petroleum Corporation;
(d) the affiliate of the Volta River Authority that holds shares in the Company;
and, if they exercise existing options to take up shares in the Company,

(e) Société Béninoise de Gaz S.A.; and

(f) Société Togolaise de Gaz S.A.;

and their successors and assigns, each a "shareholder";

"Shipper" means a person who enters into a gas transportation agreement with the Company;

"State Authorities" means the Government and each aspect of the Government at every level, including central, regional and local authorities or bodies, and all non-judicial instrumentalities, statutory bodies, taxing authorities, branches and subdivisions of any of the foregoing, and any entity which is directly or indirectly controlled by Ghana or one or more State Authorities; and includes the Environmental Protection Agency, the Tax Authority of Ghana and the Technical Authority; and each a "State Authority";

"Steering Committee" has the meaning given to it in the International Project Agreement;

"supplemental authorisations" means all rights, permits, licences, consents, permissions, exemptions and approvals which under the laws of a State are required by a buyer, a seller or a shipper or any other person in connection with the sale or purchase or transportation of natural gas which has been or is to be transported in the pipeline system or the transportation of natural gas in the pipeline system;

"tax" or "taxes" means any existing or future taxes, levies, duties, customs, imposts, contributions (such as social fund and compulsory medical insurance contributions), fees, assessments or other similar charges payable to or imposed by Ghana or a State Authority, but does include administrative fees, to the extent the fees do not exceed a reasonable amount for the services, materials or rights provided or granted;

"Tax Authority" means

(a) for value added tax, the Value Added Tax Service;

(b) for customs & excise duties, the Customs, Excise and Preventive Service;

(c) for income tax or any other tax matter, the Internal Revenue Service;

"Tax Year" means a period of one year beginning on 1 January and ending on 31 December;

"Technical Authority" means the Ministry of Energy and the Energy Commission;

"US dollars" or "US\$" means the lawful currency of the United States of America;

"VRA" means the Volta River Authority and its subsidiaries,

"WAGP activities" means any activities of the Company or any subsidiary of the Company which:

(a) are engaged in by the Company or its subsidiary in relation to the pipeline system business, or for the purpose of furthering the West African Gas pipeline system business; or

(b) are agreed by the Company and the WAGP Authority to be a WAGP activity, but does not include;

(c) the operation of local distribution companies; or

(d) any other activity agreed by the Company and the WAGP Authority not to be a WAGP Activity;

"WAGP Company" means the Company and any wholly owned subsidiary of the Company which is the subject of a notification to the WAGP Authority and the Tax Authorities in accordance with the International Project Agreement;

"WAGP Treaty" means the Treaty dated 31st January, 2003 between the Republic of Benin, the Republic of Ghana, the Federal Republic of Nigeria and the Republic of Togo concerning the West African Gas Pipeline Project;

"WAGP Tribunal" means the tribunal of that name established by the WAGP Treaty;

"WAGP Regulations" means Regulations made under section 26 of this Act; and

"West African Gas Pipeline Authority" or "WAGP Authority" means the body of that name established under the WAGP Treaty.

Section 44—Transitional Provisions

The Steering Committee appointed under the international Project Agreement shall until the WAGP Authority is fully established perform the functions of the WAGP Authority under this Act.

SCHEDULES

SCHEDULE 1

(section 1 (a))

FUNCTIONS OF THE WAGP AUTHORITY

1. Representation Functions

The WAGP Authority is empowered to take the following actions and decisions in the name and on behalf of the States:

(a) give consent to changes to the legal corporate structure of the Company as provided in clause 5.2 of the International Project Agreement or to a transfer by the Shareholders of shares in the Company as provided in clause 5.5 of the International Project Agreement;

(b) monitor compliance by the Company with its obligations under the International Project Agreement;

(c) give interim and final approvals to the Company of the design of the pipeline system and the plans for its fabrication or construction, in accordance with clause 16 and Schedule 17 of the International Project Agreement;

(d) approve the Conceptual Design Package and the Front End Engineering Design Package in accordance with Schedule 17 of the International Project Agreement;

- (e) negotiate and agree the terms of and approve the pipeline development plan with the Company, including amendments to the approved pipeline development plan;
- (f) negotiate and agree with the Company, amendments to the conditions on which pipeline licences are granted;
- (g) negotiate and agree with the Company the terms of the Access Code and any amendments to it, in accordance with Clause 26 of the International Project Agreement;
- (h) negotiate and agree with the Company waivers of the requirements of the Access Code or of clause 26 of the International Project Agreement, as contemplated in clause 26 of the International Project Agreement;
- (i) consult with the Company on the text of the WAGP Regulations and following notification by it of the proposed changes consult with the Company on the terms of any amendments to the Regulations, in accordance with clause 12.1 of the International Project Agreement;
- (j) negotiate and agree the appointment of a third party operator of the pipeline system in accordance with Clause 23.2 of the International Project Agreement;
- (k) consult with the Company on proposals for amendment to this Act, in accordance with clause 8.4 of the International Project Agreement;
- (l) negotiate and agree with the Company, any matters arising in connection with any expansion of the pipeline system as stated in clause 24 and Schedule 19 of the International Project Agreement;
- (m) give to the Company Notice of Failure to comply with the Access Code, in accordance with clause 26.7 of the International Project Agreement;
- (n) give to the Company notice to remedy a breach of the International Project Agreement, in accordance with clause 37.2 of the International Project Agreement;
- (o) give to the Company a Notice of Default, in accordance with Clause 37.4 of the International Project Agreement;
- (p) resolve the consequences of a default of the International Project Agreement by the Company, in accordance with Clause 37 of the International Project Agreement;
- (q) co-ordinate the administration of the Fiscal Laws in accordance with Schedule 8 of the International Project Agreement, including the giving of notices of assessment, negotiating and agreeing interest rate deductibility Mechanisms or approving the terms of loan agreements for interest rate deductibility purposes;
- (r) act on behalf of the States' respective tax authorities in respect of any proceedings brought by the Company against any or all of the State Parties before the WAGP Tribunal;
- (s) report to the Committee of Ministers on the implementation by the State Parties of their obligations under the Treaty and, in particular, where it appears that a State Party or State Authority is failing to comply with the provisions of this Treaty or this Act to the detriment of the Company, a project contractor, a buyer, a seller or a shipper;
- (t) carry out audits of the Company under clause 10 of the International Project Agreement;

- (u) prepare and submit to the Company a budget for its operation as specified in clause 9.4(b) of the International Project Agreement, and notify the Company of its funding requirements as provided in clause 9.4(c) of the International Project Agreement and agree to certain changes of the funding of the WAGP Authority as referred to in clause 9.4(i) of the International Project Agreement;
- (v) give the Company prior written permission to enter into gas transportation agreements other than foundation gas transportation agreements, which are not in accordance with the Access Code;
- (w) provide the Company with any approvals or consents that may be required pursuant to the International Project Agreement;
- (x) negotiate and agree upon inclusion of items in the Exempt Goods List;
- (y) negotiate and agree maintenance standards with the Company in accordance with Schedule 9 to the International Project Agreement;
- (z) negotiate and agree changes to the approved tariff methodology with the Company in accordance with Schedule 7 of the International Project Agreement;
- (aa) establish and agree with the Company a certification system;
- (bb) give notice of intention of acceptance of transfer of the pipeline system following cessation of operation by the Company as specified in clause 41.4(a) of the International Project Agreement;
- (cc) make certain notifications as are specified in the International Project Agreement or in the WAGP Regulations;
- (dd) agree with the Company on a replacement index as referred to in clause 49 of the International Project Agreement;
- (ee) in the event of any challenge to the project authorisations or supplemental authorisations, intervene as provided in clause 32.2 of the International Project Agreement;

2. Facilitation functions

The WAGP Authority has the following facilitating functions:

- (a) facilitate the grant, renewal or extension of project authorisations and supplemental authorisations in accordance with clauses 16 and 17 of the International Project Agreement;
- (b) receive, review and consult with the Technical Authorities and comment on the conceptual design package and the front end engineering design package in accordance with Schedule 17 of the International Project Agreement;
- (c) receive, review and respond to the draft and final pipeline development plan and proposed amendments to the approved pipeline development plan;
- (d) receive, review and respond to the draft and final environmental impact assessment and environmental management plan, and co-ordinate and facilitate all necessary environmental approvals;

- (e) co-ordinate amendments to the environmental management plan in accordance with clause 19 of and Schedule 2 to the International Project Agreement;
- (f) provide administrative services for the Fiscal Review Board and the WAGP Tribunal in accordance with the Rules of Procedure;
- (g) receive reports from the Company as specified in the International Project Agreement or in the WAGP Regulations;
- (h) distribute the original and amended emergency response plan prepared by the Company in accordance with the International Project Agreement; and
- (i) notify relevant agencies of occurrence of an emergency condition.

3. Regulatory Functions

The WAGP Authority has the following regulatory functions:

- (a) review and respond to the Company in relation to, application for approvals to operate and grant approvals to operate, in accordance with clause 16.5 of the International Project Agreement and the WAGP Regulations;
- (b) enforce the WAGP Regulations and exercise the powers and responsibilities conferred on it under the WAGP Regulations, including inter alia its powers to inspect the design, construction and operation of the pipeline system in accordance with clauses 16.5 and 22.8 of the International Project Agreement and the WAGP Regulations;
- (c) monitor compliance with and enforce the Access Code and exercise the powers and responsibilities conferred on it under the Access Code and any implementing regulations; if at any time the Access Code is to be implemented in accordance with clause 26.7 of the International Project Agreement,
- (d) intervene and use its best endeavours to procure the compliance by a State Party or a State Authority with the International Project Agreement or this Act where the State Party or State Authority has failed to comply to the detriment of a WAGP Company, a project contractor, a buyer, a seller or a shipper;
- (e) act as a mediator between the Company and an aggrieved person who wishes to become a shipper.

SCHEDULE 2

(section 30)

AGREED FISCAL REGIME

PART I—INTRODUCTION

1. WAGP Companies

(1) This Schedule sets out the principles and rules relating to the liability for, the calculation of, and method of assessment of, tax on the Company including in respect of each other WAGP Company that is a branch of the Company in accordance with paragraph 16 (3) of this Schedule in relation to WAGP income.

(2) For the purposes of this Schedule, all income accrued and expenses incurred by any WAGP Company in respect of WAGP activities, is income accrued and expenses incurred by the Company, and the Company shall be liable to income tax in respect of it accordingly.

(3) A WAGP Company other than the Company shall not have any liability to income tax in respect of WAGP activities.

(4) The Non-WAGP Regime shall not apply to any WAGP company in respect of WAGP activities or WAGP income except as set out in this Schedule.

(5) All income tax liabilities of the Company, and payments made by the Company in respect of those liabilities, shall be to the Internal Revenue Service.

(6) The WAGP Authority shall participate in the determination of the liability of the Company to pay income tax as set out below.

(7) The income tax liability of the Company shall be calculated by reference to each Tax Year.

2. Other Persons

(1) This Schedule also sets out the principles and rules relating to the liability for, and the calculation of, tax on buyers, sellers, shippers and project contractors, to the extent specified in this Schedule.

(2) The Non-WAGP Regime applies to such persons in respect of those activities of theirs which are contemplated in this Schedule and shall be modified in accordance with this Schedule.

(3) If any WAGP Company undertakes any action, transaction or agreement, whether or not as a part of an arrangement or series of arrangements where the principal purpose of the WAGP Company in undertaking that action, transaction or agreement or arrangement or series of arrangements

(a) is to obtain for the Company a relief or increased relief from repayment or increased repayment of income tax on WAGP income imposed by this Schedule; or

(b) is for the avoidance or reduction of a charge to income tax or an assessment to income tax, the amount of the relief, repayment or charge for the Company shall be the amount that would have been the case had the action, transaction or agreement or arrangement or series of arrangements not been undertaken.

3. Interpretation

For the purposes of this Schedule:

"Agreed Fiscal Regime" means the fiscal regime as set out in section 30 of this Act and this Schedule;

"Applicable Person" means a WAGP company or any other person including project contractors, buyers, sellers and shippers to whom the Agreed Fiscal Regime applies;

"Applicable Rate" means a rate of interest equal to fifteen percent per annum, compounding annually;

"Certification System" has the meaning given to it in the International Project Agreement;

"Completion Date" has the meaning given to it in the International Project Agreement;

"Construction Expenditure" has the meaning given to it in the International Project Agreement;

"debt" means any actual obligation whether present or future, secured or unsecured for the payment or repayment of money excluding contingent liabilities, amounts owing to trade creditors, and other liabilities incurred in the ordinary course of business;

"Dispute Resolution Procedure" has the meaning given to it in the International Project Agreement;

"Eligible Development Costs" has the meaning given to it in Schedule 16 of the International Project Agreement;

"equity" means total assets, including retained earnings and other surplus reserves less total liabilities including debt, with the resulting sum being equal to the values ascribed to common stock, preferred stock, capital surplus or paid in capital and retained earnings or earned surplus, as disclosed in the audited accounts;

"Fiscal Review Board" means the Fiscal Review Board established in accordance with the WAGP Treaty;

"Fiscal Start Date" has the meaning given to it in the International Project Agreement;

"income tax" means amounts payable by a WAGP Company in accordance with Part II of this Schedule;

"minor taxes" means taxes other than Income Tax, VAT and customs Duties;

"Non-WAGP Regime" means the legislation, regulations, principles of interpretation and application and any other features of the system of taxation applicable either generally or specifically in Ghana, as amended, modified or enacted from time to time which is not legislation introducing, amending, modifying, re-enacting or consolidating the Agreed Fiscal Regime;

"Reservation Charge" has the meaning given to it in the International Project Agreement; and

"WAGP Authority Charge" has the meaning given to it in the International Project Agreement.

PART 2—INCOME TAX

4. Liability to and rate of Income Tax

(1) Subject to the principles and rules set out in this Schedule, and in particular to paragraph 13 of this Part, the Company shall pay to Ghana, in respect of each Tax Year, income tax at the rate of 35% of its taxable income attributable to Ghana in the Tax Year.

(2) The taxable income of the Company attributable to Ghana shall be calculated as set out in this Part following the apportionment between the States of WAGP income, allowable expenses and capital allowances as set out in this Part of this Schedule.

(3) In calculating the amount due in respect of income tax from the Company to Ghana, credit shall be given for any state liability which the Company has elected under subparagraph (8) of this paragraph.

(4) Under this Schedule "state liability" means any or all of the following:

(a) an amount of money which has been determined under the Dispute Resolution Procedure to be owing by Ghana to the Company under clause 36.4 of the International Project Agreement;

(b) an amount of money which has been determined in accordance with this Schedule to be owing by Ghana to the Company under the Fiscal Laws and in respect of which no further appeal is permitted under Part 7 of this Schedule (whether as a result of the expiry of any time limit or otherwise) or in respect of which Ghana has confirmed that no appeal will be made by it;

(c) an amount of money which is deemed under sub-paragraphs (5) or (6) to be owing by Ghana to the Company under this Part;

(d) an amount of money which has been determined under paragraph 7 of this Part to be owing by Ghana to the Company;

(e) interest on any of the above amounts arising under paragraph 20(2) of this Part or clause 44.3 of the International Project Agreement.

(5) Where the Company claims that an amount is owing by Ghana to the Company under the Fiscal Laws including interest arising under paragraph 20 (2) of this Part in respect of which a further appeal is permitted under Part 7 of this Schedule; and in respect of which Ghana has not confirmed that no appeal will be made by it, the Company may give to the WAGP Authority and to the Tax Authority written notice setting out particulars of the amount in question and the circumstances in which the liability arose.

(6) If Ghana disputes that any part of the amount set out in the notice is owing to the Company, it may within 30 days of receipt of such notice make application to the WAGP Tribunal for a determination that the amount or a part of it is not owing by Ghana to the Company and if Ghana does not make such an application, or does not make it in respect of the whole of the amount claimed, then for the purpose of this Schedule the amount stated in the notice, or if Ghana disputes only part of the amount stated in the notice the balance of the amount claimed, shall be owing by Ghana to the Company and shall be a state liability in accordance with subparagraph (4)(a) above.

(7) If Ghana makes an application in accordance with sub-paragraph (5) to the WAGP Tribunal for a determination that an amount is not owing by it to the Company and

(a) the application is dismissed in whole by the WAGP Tribunal, the amount stated in the notice shall be owing and shall be a state liability;

(b) the application is dismissed in part by the WAGP Tribunal, the amount stated in the notice which relates to that part of the application which was dismissed shall be owing and shall be a state liability;

(c) the WAGP Tribunal makes a determination that an amount is owing, then that amount shall be a state liability.

(8) The Company may in a return, elect to treat any part of a state liability as a credit in the calculation of the amount of income tax due to Ghana in respect of the Tax Year to which the return relates.

(9) A notice shall be given within 30 days before the submission of the return and where a notice is given in accordance with this subparagraph the liability of the Company to income tax for the Tax Year to which the return relates shall be reduced accordingly.

5. Taxable income

(1) "Taxable income" for any period equals the amount of WAGP income attributable to Ghana for that period less the aggregate of:

- (a) allowable expenses attributable to Ghana for that period;
- (b) capital allowances attributable to Ghana in respect of that period; and
- (c) any allowable losses available in Ghana.

6. WAGP Income and Allowable Expenses

For the purposes of this Schedule,

"income" means any receipts or realised gains of a revenue nature, determined in accordance with the Accounting Principles and includes amounts recovered by way of insurance claims, judicial or arbitral awards, recovered legal costs, rental or refunds, proceeds from sale or exchange of plant or facilities or supplies, or sale or licence of intellectual property, where under the Accounting Principles such amounts would be treated as income; and

"expenses" means any payment or outflow or depletion of assets or incurrence of liabilities, other than distributions to equity participants.

7. WAGP income

(1) Subject to subparagraph (2), the amount of "WAGP income" for any Tax Year is the aggregate of

- (a) payments accrued by the Company during that Tax Year that are derived from natural gas transportation operations which are WAGP Activities;
- (b) income accrued during that Tax Year in respect of any debt claims in which the Company is the creditor;
- (c) any other income incidental to WAGP Activities accrued by the Company during that Tax Year; and
- (d) any Negative Pool Balance in respect of that Tax Year.

(2) WAGP income shall not include

- (a) an amount accrued in respect of the disposal of any capital asset other than as provided under subparagraph (1)(d);

- (b) any accrual in respect of the WAGP Authority Charge or any part of the WAGP Authority Charge;
- (c) any dividend or any accrual in respect of any dividend received from any WAGP Company;
- (d) an amount accrued or payable to a WAGP Company by a State under the International Project Agreement, except where and to the extent that the amount paid is compensation for or reimbursement of lost WAGP income; or
- (e) an interest or other income accruing prior to the Fiscal Start Date.

8. Allowable Expenses

- (1) "Allowable Expenses" for a period means all expenses, other than non-allowable expenses, which are incurred in that period including accruals on any debt claims where the Company is the debtor wholly, exclusively and necessarily for the purpose of deriving WAGP income.
- (2) For the avoidance of doubt, expenses shall not cease to be allowable expenses solely as a result of being incurred in respect of related party transactions.
- (3) For the purposes of this Schedule, an expense shall be treated as incurred at the time at which and to the extent that an accrual in respect of the expense is properly recordable in the accounts of the Company in accordance with the Accounting Principles (or, in the case of costs incurred by shareholders or their affiliates, in the account of that person in accordance with its Accounting Principles).

9. Scope of "non-allowable expenses"

"Non-allowable expenses" means:

- (a) expenses that are interest, to the extent that
 - (i) the average ratio of debt to equity for the consolidated group during the Tax Year exceeds 70:30 provided that in calculating the amount of allowable expenses, and non-allowable expenses, where this ratio is exceeded, the amount of the interest expense shall be pro-rated between the two in accordance with the amount of debt that falls within and exceeds this ratio, respectively;
 - (ii) such interest expense is incurred in an amount exceeding a reasonable commercial return for a borrowing between unconnected parties on the same terms for the same amount and entered into at the same time and for the same period and in the same currency as the relevant borrowing by the Company; and for the purpose of determining whether any interest expense exceeds the reasonable commercial return, where the Company and the WAGP Authority agree on a mechanism for determining reasonable interest rates for the purposes of this paragraph, or if the WAGP Authority approves the terms of a finance facility, then any interest expense incurred under a facility which complies with that mechanism or under any facility the terms of which are so approved, shall not be a non-allowable expense; or
 - (iii) the debt in respect of which the interest expense accrues, is incurred for the principal purpose of reducing the Company's tax liability.

(b) any expenses incurred in providing business entertainment or gifts, other than the cost of accommodation, food and drink attributable to any employee or director of any WAGP Company incurred in Ghana;

(c) legal fees or other costs of proceedings incurred in relation to arbitration of any determination under the International Project Agreement;

(d) any expenses incurred prior to the Fiscal Start Date;

(e) any expenses already taken into account as a deduction in respect of any tax liability calculated by reference to net profits or gains of any shareholder or affiliate of a shareholder in Ghana;

(f) any expenses in relation to any purchase of goods or services from any shareholder or an affiliate of a shareholder to the extent that the consideration given exceeds the consideration which would be payable in an arm's length transaction of substantially the same nature between unconnected parties;

(g) the cost of any letter of guarantee from shareholders or affiliates to the State, which is given in relation to the International Project Agreement;

(h) fines and penalties imposed under any law and the costs of indemnities to employees, contractors or agents of any WAGP Company in respect of the fines and penalties;

(i) any general overhead or general head office costs incurred by shareholders or affiliates and re-charged to any WAGP Company which does not include any amounts charged in respect of specific services supplied and separately invoiced by the shareholders or affiliates, to the extent that these exceed 1.5% of the Company's aggregate allowable expenses, excluding the amounts to be re-charged, for the relevant Tax Year;

(j) any depreciation for accounting purposes in the value of any assets;

(k) any capital expenditure or any debit for accounting purposes arising by reference to any capital expenditure;

(l) any payment by the Company to the WAGP Authority which is reimbursable through the WAGP Authority Charge; and

(m) any payments of, or on account of, tax and any interest, supplement or penalty in respect of an underpayment of, or on account of, tax.

10. Reliefs

"Claimed reliefs" are the allowable losses available in Ghana plus capital allowances claimed in the return in respect of Ghana for the relevant Tax Year.

11. Loss Reliefs

(1) If in any Tax Year the amount of allowable expenses attributable to Ghana exceeds the amount of WAGP income attributable to Ghana, the excess shall be an "allowable loss" of the Company available in Ghana for that Tax Year.

(2) An amount of allowable loss shall be carried forward and may be claimed by the Company in any of the nine subsequent Tax Years in accordance with this paragraph and with paragraph 5 of this Schedule.

(3) Where an amount of any allowable loss is claimed and utilised by the Company in Ghana in any subsequent Tax Year,

(a) the amount of the taxable income of the Company in Ghana in respect of that Tax Year shall be reduced by the amount of allowable loss so claimed; and

(b) the amount of that allowable loss that may be carried forward for use in Ghana in subsequent Tax Years shall be reduced by the amount so used.

(4) The Company's claim of any amount of allowable loss shall be in chronological order beginning with those that arose in the earliest available Tax Year.

12. Capital Allowances

(1) All eligible development costs, and to the extent not included in the eligible development costs, all allowable expenses together with all expenses excluded from the definition of allowable expenses solely by reason of paragraph 9(a) incurred by the Company prior to the Fiscal Start Date, less the sum of all WAGP income derived by the Company prior to the Fiscal Start Date, including the amount of any interest income accruing to the Company prior to the Fiscal Start Date, shall be the amount of the "capital account" as at the Fiscal Start Date.

(2) At the end of each Tax Year ending after the Fiscal Start Date, the amount of the capital account of the Company shall be adjusted by adding the amount of capital expenditure incurred by the Company in that Tax Year, other than capital expenditure incurred prior to the Fiscal Start Date, and subtracting an amount equal to the aggregate of the Disposal Proceeds for that Tax Year except that the result shall not leave the capital account as a negative number.

(3) To the extent that the aggregate of the disposal proceeds for any Tax Year exceeds the amount of the capital account after adding the amount of capital expenditure incurred by the Company in that year but prior to adjustment in accordance with subparagraph (2) in respect of the amount equal to the aggregate of the disposal proceeds for that Tax Year or in accordance with this subparagraph, the amount of the excess, the "Negative Pool Balance", shall be treated as WAGP income of the Company for the relevant Tax Year, and the amount of the capital account shall be reduced to zero.

(4) The Company may elect to claim an amount of relief, referred to as capital allowances" equal to not more than 25% of the balance of its capital account at the end of the relevant Tax Year.

(5) The amount of the capital allowances shall be taken into account in reducing the taxable income of the Company for the relevant Tax Year as described in paragraph 5, and shall be deducted from the capital account at the commencement of the next succeeding Tax Year.

(6) Capital allowances shall not be claimed, and the balance of the capital account shall not be reduced until the Tax Year or part thereof which falls after the end of the income tax holiday period, and in subsequent Tax Years.

(7) "Capital expenditure" is

(a) the expenses of acquiring or improving any asset which is a capital asset; and

(b) the expenses of capital services

but, in each case, shall not include any expenses that do not exceed US\$10,000.

(8) An asset is a "capital asset" if that asset is acquired not with a view to its sale for a profit, but is used for the enduring benefit of the business of the Project.

(9) A service is a "capital service" if that service is not provided to the Company or acquired by the Company to be utilised by the Company directly for an onward supply of goods and services with a view to profit, but is supplied for the enduring benefit of the business of the Project.

(10) The Company will keep a ledger in US dollars recording all capital expenditure incurred and the capital asset in respect of which that capital expenditure has been incurred.

(11) Where any capital asset is disposed of by the Company other than a disposal which is disregarded in accordance with paragraph 16(3)(d) of this Schedule, "disposal proceeds" shall arise in the Tax Year in which the disposal takes place, and the amount of the "disposal proceeds" shall be the amount of the sale proceeds or the value of other consideration received for that capital asset.

13. Income Tax Holiday

(1) The "income tax holiday period" shall be the period starting on the Fiscal Start Date, and lasting for 60 months.

(2) Income tax is not payable by the Company in respect of WAGP income arising prior to the last day of the Income tax holiday period.

(3) If a Tax Year begins before and ends after the last day of the income tax holiday period, the amount of WAGP income earned and allowable expenses incurred in that Tax Year in the part periods before the last day and after the last day of the income tax holiday period shall be calculated on a pro-rata basis by apportionment of the total WAGP income and allowable expenses of the Tax Year between the two periods according to the number of days falling before that last day and the number of days falling after.

(4) The maximum capital allowances claimable in respect of the period after the last day of the tax holiday period shall be pro-rated downwards in the same manner.

(5) For the avoidance of doubt, income tax payable in respect of taxable income arising during the Tax Year in question shall be calculated only by reference to WAGP income and allowable expenses apportioned to the period after the last day of the income tax holiday period.

14. Assessment and Administration

(1) All WAGP income, allowable expenses and capital allowances for a Tax Year shall be apportioned between each State in proportion to that State's Apportionment Percentage for that Tax Year determined in accordance with this paragraph irrespective of where or how such WAGP income might have been earned or accrued or expenses incurred.

(2) In each Tax Year the "Apportionment Percentage" of Ghana shall be derived according to the following formula:

$$\text{Aps} = 45 \times ((\text{LS} \div \text{LT}) + (\text{RCS} \div \text{RCT})) + 2.5$$

where

APs = the Apportionment Percentage of Ghana in the Tax Year, expressed as a percentage;

Ls the length of pipeline comprised in the pipeline system situated within Ghana as at January 1 in that Tax Year, which has been commissioned, for which purpose the length of the pipeline within Ghana shall be determined by the as built survey carried out by the Company, and the length of lateral pipelines shall be included;

LT = the total length of pipeline comprised in the pipeline system as at January 1 in that Tax Year, which has been commissioned, for which purpose the length of the pipeline shall be determined by the as built survey carried out by the Company, and the length of lateral pipelines shall be included;

RCS = the sum of the quantities of reserved capacity which are reserved at any time for transportation of natural gas as at January 1 in that Tax Year, for delivery out of the pipeline system in Ghana; and

RCT = the total sum of the quantities of reserved capacity which are reserved at any time for transportation of natural gas as at January 1 in that Tax Year.

(3) On or before January 10 in each Tax Year, the Company shall notify the WAGP Authority and the Tax Authority of its calculation of the Apportionment Percentage of each State for that Tax Year.

(4) The WAGP Authority shall on or before January 31 in that Tax Year notify the Company, on behalf of all of the Tax Authorities, whether it accepts the correctness of that calculation.

(5) If the WAGP Authority notifies the Company that all of the Tax Authorities accept the correctness of the calculation, or if the WAGP Authority fails to notify the Company by January 31, then the Apportionment Percentages for that Tax Year shall be as calculated by the Company.

(6) If the WAGP Authority notifies the Company that one or more Tax Authorities do not accept the correctness of the calculation, the Dispute Resolution Procedure shall be used to determine the Apportionment Percentage to apply for that Tax Year.

(7) Pending the final determination under the Dispute Resolution Procedure, the Apportionment Percentages which applied during the previous Tax Year shall continue to apply.

(8) Upon the final determination of the Apportionment Percentages under the Dispute Resolution Procedure, there shall be an adjustment between the States and if applicable, between the States and the Company of any monies paid by or to the Company, without penalties or interest (including any supplement or interest as set out in paragraphs 20(1) or 20(2) of this Schedule, or any penalties set out under Part 6 of this Schedule.

(9) The Apportionment Percentages to apply in any Tax Year, or the method of determining the Apportionment Percentages, may be adjusted by the States by written notice signed by each Relevant Minister and delivered to the Company prior to Tax Year; provided that:

(a) the total of the Apportionment Percentages to apply in a Tax Year shall always equal one hundred percent (100%);

(b) if a methodology is to be used to determine the division of the Apportionment Percentages between the States, the Apportionment Percentages shall be readily ascertainable on or before January 1 in the Tax Year concerned; and

(c) if on January 1 in a Tax Year adjusted Apportionment Percentages which the States intend to apply in that Tax Year are not readily ascertainable in accordance with subparagraph (b) above, then the Apportionment Percentages which applied in the previous Tax Year shall continue to apply.

15. Tax returns

(1) Commencing with the Tax Year in which the Fiscal Start Date occurs, the Company shall submit returns for each Tax Year as set out in the subsequent subparagraphs.

(2) The returns shall comprise the audited company accounts of the Company, prepared in accordance with the Accounting Principles together with tax accounts showing the appropriate tax adjustments to the financial statements.

(3) The returns shall include the results of the Company irrespective of the State to which they relate and the results of each other WAGP Company that is deemed to be a branch of the Company pursuant to paragraph 16 (3) and shall be prepared in accordance with the bases and assumptions in paragraph 16 (3).

(4) The returns shall set out the WAGP income, allowable expenses and capital allowances for that Tax Year and the apportionment in accordance with paragraph 14(2) above of those amounts to each State, and shall include a calculation of the Company's liability to income tax in each State for that Tax Year and the basis of that calculation.

(5) The Company shall maintain its accounting records and present its financial statements, income tax computations and returns in US dollars.

(6) The Company shall keep its original financial statements, income tax computations, returns and all reasonably necessary supporting documentation in premises situated within one of the States at the choice of the Company.

(7) The Company shall submit one return to the WAGP Authority and one to Internal Revenue Service within six months of the end of the Tax Year and the final date of the six month period shall be the "Filing Date".

(8) The Internal Revenue Service together with the relevant Tax Authorities of the other States shall jointly review the returns in conjunction with the WAGP Authority and prepare a single combined assessment referred to as the "Combined Assessment" on the basis of the information contained in the returns.

(9) The Combined Assessment shall show the calculation of the taxable income of the Company in each State for the Tax Year in question, and the liability of the Company to each State for income tax in respect of the Tax Year in question, having credited any amounts to be credited in accordance with paragraph (2) above, and shall constitute a tax assessment referred to as the "Assessment" by each individual State for the amounts so assessed in respect of that State.

(10) The WAGP Authority shall, on behalf of the Tax Authority in each State, issue the Combined Assessment to the Company within 90 days of the Filing Date; except that if the Company has not provided with the returns reasonably adequate information to justify the claims and calculations in the returns, the WAGP Authority may, within 30 days of the Filing Date, request such further information as it may reasonably consider necessary to justify the claims and calculations in the Returns, in which case the issue of the Combined Assessment shall be no later than the later of (a) 90 days following the Filing Date, and (b) 30 days after the Company provides such further information, the such later date being the "Assessment Due Date".

(11) If the Company fails to submit returns in accordance with subparagraphs (1) to (7) above on or before the date falling 12 months after the Filing Date, the Internal Revenue Service together with the Tax Authorities in the other States may jointly (but not otherwise than jointly) in conjunction with the WAGP Authority prepare a Combined Assessment on the basis of the information of which they are aware.

(12) The Combined Assessment prepared in accordance with subparagraph (11) shall constitute a tax assessment by each individual State for the amounts so assessed in respect of that State.

(13) If, after the notification of a Combined Assessment the Company submits returns in accordance with requirements of subparagraphs (1) to (7) above, the returns shall be assessed in accordance with this Schedule and following such assessment subparagraph (12) shall cease to have effect and this Schedule shall apply as if no Combined Assessment had been issued under subparagraph (11).

(14) If no assessment is issued in accordance with subparagraph (10) on or before the Assessment Due Date, then the Company shall be deemed to have been assessed by the Internal Revenue Service, exactly in accordance with the return filed by the Company, and such deemed assessment shall constitute the Assessment by Ghana accordingly.

(15) An Assessment of liability to income tax of the Company shall only be made in accordance with subparagraphs (9), (10), (11) and (14), and shall not be made by the Internal Revenue Service otherwise than in accordance with those paragraphs.

(16) An Assessment made under subparagraphs (10), (11) or (14) shall be without prejudice to the power for an amended or altered Assessment to be made following an audit, in accordance with paragraphs 17(4), (5) and (6).

16. Consolidated Tax Returns

(1) The Company shall promptly notify the WAGP Authority and the Internal Revenue Service in writing, when any wholly owned subsidiary of the Company engages in WAGP activities.

(2) The Company and any subsidiary in respect of which the Company gives a notice under subparagraph (1) together referred to as the "consolidated group" shall be treated as a consolidated entity for the purposes of calculating the liabilities to income tax of the members of the consolidated group under this Schedule.

(3) For the purposes of Part 2 of this Schedule, each of the members of the consolidated group other than the Company shall, with respect to the Tax Year in which notice is given under subparagraph (1) above and each subsequent Tax Year, be deemed to be a branch of the Company in respect of WAGP income, allowable expenses and claimed reliefs, and

(a) income accruing to any other WAGP Company shall be treated as if it is or was accrued by or to the Company;

(b) allowable expenses incurred by any other WAGP Company shall be treated as if they are or were incurred by the Company;

(c) the belief, intent or purpose of the company shall be the same as that of the WAGP Company concerned, had no consolidation taken place;

(d) any payments to and receipts from another member of the consolidated group including dividends, any indebtedness between members of the consolidated group and all supplies and disposals between members of the consolidated group shall be disregarded;

(e) any asset that is or was acquired, held or improved by any WAGP Company shall be treated as if it is or was acquired, held or improved by the Company;

(f) any indebtedness of or to any WAGP Company (other than any indebtedness disregarded pursuant to sub-paragraph (d) shall be treated as if it is or was indebtedness of or to the Company,

(g) any goods or services (other than any goods or services disregarded pursuant to sub-paragraph (d) above provided to or acquired by any WAGP Company shall be deemed to be provided to or acquired by the Company, and any goods or services other than goods or services disregarded pursuant to sub-paragraph (d) provided by any WAGP Company shall be deemed to be provided by the Company;

(h) any action, transaction or omission of any WAGP Company shall be treated as an action, transaction or omission of the Company;

(i) any allowable loss that would have arisen to any member of the Consolidated Group other than the Company but for the bases and assumptions set out in sub-paragraphs (a) to (h) shall be treated as an allowable loss of the Company; and

(j) each WAGP Company other than the Company shall have no liability to income tax in respect of WAGP activities or WAGP income.

(4) The Company shall submit returns; and Assessments shall be issued to the Company, in accordance with the bases and assumptions set out above.

17. Audit and Amended Assessments/Returns

(1) The WAGP Authority may, on behalf of and as agent of the Internal Revenue Service request further information and conduct an audit of any return at any time during the period of six years from the Filing Date for that Return.

(2) Except as provided in subparagraph (1), no audit of the Company shall be conducted by the Internal Revenue Service.

(3) The WAGP Authority shall be empowered to act on behalf of and as agent of the Internal Revenue Service in dealing with the Company on a dispute as to an Assessment or the outcome of an audit and any agreement reached between the WAGP Authority so acting and the Company shall be binding on the Internal Revenue Service.

(4) The Company may at any time during the six years following the filing date submit amended Returns for a Tax Year, one each to the WAGP Authority and the Internal Revenue Service. The Internal Revenue Service shall issue an amended Assessment or more than one amended Assessment in accordance with paragraph 15(8), (9) and (10) within 90 days of receipt of the amended return or, if it fails to do so, paragraph 15(14) shall apply.

(5) The WAGP Authority, acting for and on behalf of the Internal Revenue Service may issue an altered Assessment to the Company if it considers that a previous Assessment was incorrect in any manner.

(6) If there is a dispute as to an Assessment, then any agreement reached to resolve that dispute shall, in the absence of fraud, be binding on the WAGP Authority, the Company and the Internal Revenue Service and no Assessment shall be issued which is inconsistent with that agreement.

18. Currency of Income tax Payments

All payments in respect of income tax shall be made in US dollars.

19. Interim Payments

(1) Within 30 days of the commencement of each Tax Year, the Company shall deliver to the WAGP Authority an estimate of its income tax liability in respect of taxable income including, where applicable, as a result of paragraph 16(3) above for that Tax Year and the Company may vary the estimate at any time during the year by written notice to the WAGP Authority.

(2) The Company shall make instalment payments on or before each of March 31, June 30 and September 30 in each Tax Year and the payment shall be of such an amount that the Company following that payment shall be deemed to have paid an amount of income tax in respect of taxable income in Ghana equal to the estimated income tax in respect of taxable income in Ghana for the Tax Year multiplied by the product of 25% and the number of instalment payment dates that have then fallen due and the final instalment payment shall be made on or before December 31.

(3) The Company shall, at the same time as filing its returns for each Tax Year, pay a further instalment payment equal to the amount of further income tax, if any, which the returns indicate is owing by the Company.

(4) An adjusting payment, if any, referred to as the "Adjusting Payment" shall be due within 30 days from the date on which the Assessment is issued, from the Company to Ghana if the

result of the Assessment is that further income tax is owed by the Company to Ghana, or from Ghana to the Company if the result of the Assessment is that the Company has overpaid instalment payments for the Tax Year in question.

(5) Any supplement due from the Company under paragraph 20 shall also be due on that date and in the event that the Adjusting Payment is due from Ghana to the Company and any supplement is due from the Company to Ghana, the amounts shall be netted off and only the remainder shall be due.

(6) If an income tax liability of the Company is adjusted following the issuance of an amended Assessment or an altered Assessment or following an appeal by the Company or a State, a further adjusting payment, if any, referred to as the "Further Adjusting Payment" will be due from or as the case may be, to the Company within 30 days from the date of which the amended or altered Assessment is issued or, as the case may be, the date on which judgement is given by the relevant appellate body, together with interest at the Applicable Rate from the date on which the amended or altered Assessment or decision on appeal is made.

20. Supplement and interest

(1) Where, for any Tax Year, the amount of income tax due from the Company in Ghana on the basis of the return for the Tax Year in question exceeds the product of

(a) 1.05; and

(b) the aggregate of the instalments paid by the Company in Ghana for the Tax Year in question pursuant to paragraph 19(2).

the Company shall pay, in accordance with paragraph 19(5) above, to Ghana a supplement of an amount equal to 10% of that excess.

(2) Interest shall be payable in US dollars, and payable at the Applicable Rate on all other amounts owed by the Company to Ghana or by Ghana to the Company under the fiscal laws, and interest shall not be due in respect of over or under payment of instalments under paragraphs 19(2) and (3).

21. Withholding taxes

(1) Amounts in respect of taxes shall not be with held or deducted from

(a) dividends declared by the Company or any dividends declared by any WAGP Company which are disregarded pursuant to paragraph 16(1) and (2);

(b) subject to subparagraph (2), payments by or to the Company in respect of interest, principal or fees, charges or costs in respect of debt or any such payment by or to any WAGP Company that is disregarded pursuant to paragraph 16(1) and (2);

(c) payments in respect of branch profits or repatriation of branch capital of the Company or any such payment by or to any WAGP Company that is disregarded pursuant to paragraph 16(1) and (2);

(d) payments made for sales of natural gas which has been or is to be transported through or consumed in the pipeline system; or

(e) payments to a Shipper or the Company for transportation of natural gas through the pipeline system or any such payment by or to any WAGP Company that is disregarded pursuant to paragraph 16(1) and (2).

(2) If the Company makes any payment of interest to a person who is not resident in any of the States in respect of debt owed by the Company which was incurred other than in connection with the funding of Construction Expenditure or working capital or other costs incurred by the Company prior to the Completion Date, or refinancing of debt, originally incurred in connection with the funding of Construction Expenditure or working capital or other costs incurred by the Company prior to the Completion Date,

(a) the payment of interest shall be made subject to a withholding in respect of taxes of the lender, of 10% of the gross payment;

(b) the amount of the withholding shall be paid by the Company to the Internal Revenue Service in proportion to the Apportionment Percentages of Ghana applying in the Tax Year in which the withholding is made; and

(c) the amount paid to the Internal Revenue Service shall be a final tax on income in Ghana in respect of that interest.

(3) Where the Company receives services from a contractor within any of the States, the Company shall require a separate invoice in respect of the services that are rendered in Ghana, or a breakdown showing the amounts invoiced in respect of services rendered in Ghana.

(4) The Company shall upon paying for services under subparagraph (3), apply a 6% withholding in respect of the invoiced amount and shall pay to the contractor the net amount and to the Internal Revenue Service the amount withheld in respect of services rendered in Ghana.

(5) A withholding shall not be applied to services that are not rendered in Ghana or in any of the other States, and there shall not be a withholding in respect of goods supplied to the Company, whether supplied in conjunction with services or otherwise.

(6) For the Purposes of subparagraphs (3), (4) and (5) a service shall be considered to be rendered and received where the supplier of the services actually performs the services.

(7) Where a withholding is applied under subparagraph (4), the treatment of the withholding for the relevant Contractor shall be as follows:

(a) where the contractor is a resident of Ghana, the withholding shall be a refundable credit against taxation income of that contractor in Ghana; and

(b) where the contractor is not a resident of Ghana, the withholding shall be a final tax on income in Ghana.

22. Information Provision

The Company must notify the Internal Revenue Service whenever it makes a Payment of a dividend or an interest payment to a resident of Ghana.

23. Other Transactions Related to Income Tax

(1) A buyer, seller or shipper that is not a resident of Ghana shall not be subject to taxation on its income in Ghana unless it carries on business in Ghana through a permanent establishment situated in Ghana.

(2) The income of a buyer, seller or shipper who carries on business through a permanent establishment may be taxed in Ghana, but only so much of the income as is attributable to that permanent establishment shall be subject to the tax.

(3) A buyer, seller or shipper that is a resident of two or more States shall be deemed to be a resident only of the State in which its place of effective management is situated.

(4) A buyer, seller or shipper that is a resident of any State shall be subject to taxation on income only in that State unless it carries on business in another State through a permanent establishment situated in that other State.

(5) If a buyer, seller or shipper carries on business as mentioned earlier through a permanent establishment, the income of that buyer, seller or shipper may be subject to taxation in that other State but only so much of the income as is attributable to that permanent establishment in that State shall be subject to the tax.

(6) The amount of the income of a buyer, seller, or shipper that is attributable to a permanent establishment in that other State, and therefore subject to taxation in that other State, shall not also be subject to taxation in the State of residence.

(7) In this Part of this Schedule, the following expressions have the following meanings:

(a) "resident" in respect of a State means a person that under the laws of that State is liable to taxation in that State by reason of its incorporation or registration in that State, or by reason of its place of management being in that State; but does not include a person liable to taxation in that State in respect only of income from sources in that State or capital situated in that State; and

(b) "permanent establishment" in respect of a State means a fixed place of business in that State through which the business of an enterprise is wholly or partly carried on

and a person shall not be a resident of or have a permanent establishment in a State by reason only that the person holds an interest in another person that is a resident of or has a permanent establishment in that State.

(8) Any question of apportionment of income or of expenses or of profits to any permanent establishment shall be determined in a manner consistent with the provisions of article 7 of the United Nations Model Double Taxation Convention of June 2001.

PART 3—VAT

24. Application of VAT

(1) The Non-WAGP Regime in respect of value added tax ("VAT") in Ghana shall apply subject to the provisions of this Part.

(2) In this Part unless the context otherwise requires references to the Ghana Government or Tax Authority are references to the Value Added Tax Service.

(3) Supplies of goods or services which are imported from outside Ghana for the purpose of construction of the Pipeline System shall be exempt for the purposes of VAT, in the case of relevant goods that are items of plant, equipment, machinery or other materials to be used in the construction of the pipeline system and

(a) are listed on or are to be parts of items listed on the Exempt Goods List; and

(b) have been certified under the Certification System as qualifying for VAT exemption.

(4) VAT in respect of supplies of goods or services rendered in Ghana shall, to the extent that the relevant expenditure is capital expenditure, be zero rated.

(5) A supplier of goods or services shall be entitled to rely on a certificate given under the Certification System as evidence that its supply is zero-rated.

(6) VAT in respect of supplies of services rendered in Ghana by contractors without a permanent business establishment in any State to a WAGP Company, where such supplies of services are not zero-rated or exempted shall be subject to VAT.

(7) Where a foreign contractor is registered for the purposes of VAT in Ghana, the relevant WAGP Company which is under paragraph 27(1) and (2) part of the VAT Consolidation, shall make payment of that VAT directly to that foreign contractor and may assume that the relevant foreign contractor is bound to account for the VAT to the VAT Service.

(8) Where a foreign contractor is not registered for VAT, the relevant WAGP Company shall withhold that VAT from the payment to the foreign contractor and shall account for that VAT to the VAT Service.

(9) Natural gas imported for transit, or for consumption in the course of the pipeline system operations, shall be exempt from VAT but natural gas imported for sale shall be subject to VAT on terms and conditions that are comparable to those for competing fuels.

(10) The sale of natural gas in Ghana for export through the pipeline system, and the provision of services in Ghana to facilitate the delivery of natural gas into the Pipeline System, shall be zero rated.

(11) Natural gas transportation services in respect of the Pipeline System shall be zero rated.

(12) For the purposes of VAT supplies of services shall be made where the supplier of services actually performs the services and supplies of goods made where title to the relevant goods passes.

25. VAT Returns and Refunds

(1) The Company is entitled to a refund of all VAT paid or deemed paid by it pursuant to paragraph 26(1), (2) and (3) in respect of supplies of goods and services to it or supplies of goods and services considered pursuant to paragraphs 26(1), (2) and (3) to have been made to it.

(2) The Company shall submit to the VAT Service a VAT return in respect of each month on or before the 15th day of the subsequent month.

(3) The VAT Service shall within 30 days of the submission of the VAT Return, reimburse the Company, in the currency or currencies in which the Company made the payments concerned, an amount equal to the VAT refund due in respect of the supplies received during the period to which that return relates.

(4) Any amount of VAT refund not reimbursed to the Company concerned within 30 days of submission of a VAT return by the Company shall bear interest at the Applicable rate from that date until the date of actual payment or effective date of a credit as set out below.

(5) If the VAT Service fails to refund an amount due in respect of such a period of account after all reasonable efforts by the Company to recover that amount from the VAT Service, the Company may claim a credit in respect of that payment due in the calculation of income tax payable in Ghana by the Company, in accordance with subparagraph (1).

(6) If the Company claims a credit in accordance with subparagraph (1) the Ghana Government shall cease to owe that amount to the Company under this clause with effect from the time when, due to the credit, it pays a lesser amount of income tax than it would otherwise have paid.

26. VAT Consolidation

(1) The Company shall to the extent that it has not already done so in accordance with paragraph 16 of this Schedule give notice in writing to the WAGP Authority, and to the VAT Service of the name and registered office of any other WAGP company carrying out WAGP activities within its jurisdiction.

(2) Within Ghana, the Company and all other WAGP Companies operating in Ghana shall be deemed to be a single entity (VAT consolidation) for the purposes of calculating their liabilities to, and rights to a refund in respect of, VAT and their other rights and obligations under this Part of this Schedule.

(3) For the purposes of this Schedule, the business carried on by each of the WAGP Companies that are members of the VAT consolidation shall, with respect to the VAT period in which a notice is given in accordance with subparagraph (1) above and each subsequent VAT period, be treated as carried on by the Company and in particular:

(a) any supply of goods or services by any member of the VAT consolidation to another member of the VAT consolidation shall be disregarded;

(b) any other goods or services supplied by or to a member of the VAT consolidation shall be treated as supplied by as the case may be or to the Company; and

(c) any payments of VAT by any member of the VAT consolidation shall be treated as a payment by the Company.

(4) The Company shall submit a VAT return, and the VAT Service shall make payments to the Company, in accordance with the bases and assumptions set out in this Part.

PART 4—CUSTOMS DUTIES

27. Application of Custom Duties.

(1) The Non-WAGP Regime in respect of customs duties in Ghana shall apply subject to the provisions of this Part.

(2) For the purposes of this Part "customs duties" includes all customs and excise duties, all import and export duties and all similar charges, fees, taxes, levies and duties.

(3) In this Part unless the context otherwise requires, a reference to the Ghana Government means a reference to the Customs, Excise and Preventive Service.

28. Conditions for Exemption from Custom Duties

(1) Goods imported for use on the Pipeline System shall be exempt from custom duties, if

(a) the relevant goods are items of plant, equipment, machinery or other Materials to be used in the construction of the Pipeline System and are listed or are to be parts of items listed on the Exempt Goods List; and

(b) they have been certified under the Certification System as qualifying for this exemption.

(2) If subsequent to the importation of any goods without the payment of duty in accordance with the application of subparagraph (1), the goods are utilised within Ghana other than for the purposes of the pipeline system, then the amount of duty that would have been due if the exemption had not been available on the initial importation shall become due from the WAGP Company concerned.

29. Payment of Clearance Fees

Each WAGP Company is obliged to pay local or national clearance fees, registration fees and any other fees in relation to the importation of capital assets.

30. Import or Export of Natural gas Exempted from Customs duty

Customs duties shall not be levied in respect of the import or export of natural gas.

PART 5—OTHER TAXES

31. Corporate Income Taxes

Tax on income or profits or gains or any other corporate income tax other than as described in Part 2 of this Schedule and tax on capital gains shall not be payable by any WAGP company in respect of WAGP income or income derived from WAGP activities or income falling within paragraph 7(1)(b) in Part 2 of this Schedule.

32. Employment Taxes

The Non-WAGP Regime in respect of payroll taxes and national insurance or social security contributions in respect of employees of any WAGP Company shall apply to that WAGP Company.

33. Administrative Fees

Each WAGP Company is liable to pay administrative fees of general application, but to the extent that administrative fees exceed an amount that is regular and necessary for the services, materials or rights provided or granted they shall be considered to be Taxes.

34. Capital Gains on Company Shares

Any gains arising from the sale of securities as a consequence of the exercise of the rights set out in clause 6 of the International Project Agreement, or the proceeds of such sale, shall not be subject to taxation.

35. Any other Taxes

(1) The WAGP Companies shall, in respect of WAGP activities, be liable to taxes on income or profits or gains, to VAT and to customs duties, as set out in Parts 2, 3, and 4 of this Schedule, but not otherwise.

(2) Each WAGP Company shall be subject to all minor taxes within the Non-WAGP Regime, but where the combined payments of the WAGP Companies in respect of minor taxes paid to Ghana and to any Tax Authority of Ghana in a Tax Year, exceeds in aggregate, in respect of WAGP activities, an amount equal to US\$50,000 adjusted for inflation as set out below, the amount of that excess shall be a debt owed by Ghana to the Company.

(3) The amount of \$50,000 shall be adjusted for inflation as follows:

$$AA = \$50,000 \times I_y \div I_o$$

Where:

AA = The adjusted amount for the Tax Year in question.

I_o = The average of the Inflation Index for the twelve calendar months up to and including October 31 prior to the calendar year in which FID occurs.

I_y = The average of the Inflation Index for the twelve calendar months up to and including October 31 prior to the calendar year for which the calculation is being made.

(4) Where the Company considers that in a Tax Year it or any other WAGP Company has paid in Ghana minor taxes in excess of the adjusted amount determined in accordance with paragraph subparagraph (2) and (3) above, the Company shall submit to the Ghana Tax Authority with a copy to the WAGP Authority, a statement specifying all minor taxes paid during the Tax Year and its calculation of the amount of the excess.

(5) The Ghana Government shall, within 30 days of the submission of such return, reimburse the Company, in the currency or currencies in which the Company or the WAGP Company concerned made the payments, an amount equal to the amount due from Ghana under subparagraph (2) and (3)

(6) If the Company concerned is not reimbursed within 30 days of submission of a return the amount which the company should have been reimbursed shall bear interest at the Applicable Rate from that date until the date of actual payment.

(7) Where the Ghana Government fails to refund an amount due in respect of such a period of account, after the Company has made all reasonable efforts to recover that amount from the

Government, the Company may claim a credit in respect of the payment due in the calculation of income tax payable in Ghana by the Company, in accordance with paragraph 4 in Part 2

(8) If the Company claims a credit in accordance with paragraph 4, the Ghana Government shall cease to owe that amount to the Company under this paragraph with effect from the time when, due to the credit, the Company pays a lesser amount of income tax than it would otherwise have paid.

PART 6—PENALTIES

36. Power of Tax Authority to Impose Penalty

A Tax Authority of Ghana may impose a penalty on the Company in accordance with this Part only.

37. Failure to Submit a return in Respect of Income Tax

(2) Fixed Penalty payable under subparagraph (1), shall be,

(a) US\$400, if the return is submitted within 3 months after the Filing Date; or

(b) US\$800, if the return is submitted later than 3 months after the Filing Date but within 12 months after the Filing-Date.

(3) The Internal Revenue Service may impose in accordance with this Part a further penalty payable by the Company to the Internal Revenue Service (a "Further Penalty") in addition to a Fixed Penalty if the Company fails to submit a return within 12 months after the Filing Date for that return.

(4) A further Penalty imposed by the internal Revenue Service shall be 20% of the unpaid income tax, being the amount of the income tax liability of the Company in Ghana for the Tax Year concerned less the sum of the instalments paid pursuant to paragraph 19(2) for the Tax Year to which a return relates.

(5) The Further Penalty payable pursuant to subparagraph (4) shall be calculated by reference to the Assessment of Ghana under paragraphs 15(8), (9), (10) and (11) and shall be subject to adjustment if the amount of the Assessment is adjusted or altered.

38. Delivery of an Incorrect Return in Respect of Income Tax

(1) The Internal Revenue Service may impose in accordance with this Part a penalty referred to as tax related penalty; payable by the Company to the Internal Revenue Service if the Company knowingly and with an intention to deceive the Internal Revenue Service:

(a) submits a return that contains material errors or omissions; or

(b) submits incorrect company accounts with any return that contains material errors or omissions.

(2) Where the Company discovers that there has been a material error or omission in a return or any company accounts submitted to the Internal Revenue Service that was not made knowingly and with an intention to deceive the Internal Revenue Service, the Internal Revenue Service may impose in accordance with this Part a penalty (a Tax-related Penalty) unless the Company remedies the error or omission within a reasonable period.

(3) Where the Company discovers that there has been a material error or omission in a return or any Company accounts submitted to the Internal Revenue Service whether or knowingly or not and with no intention to deceive and notice of the error or omission is given by the Company to the Internal Revenue Service before the Internal Revenue Service issues a notice under paragraph 42 in respect of that error, the Internal Revenue Service may not impose a penalty and any subsequent notice under paragraph 42 by Internal Revenue Service in respect of that error shall be invalid.

(4) The amount of a tax-related penalty payable by the Company under paragraph 38(1) shall not exceed the amount of the liability of the Company to income tax in Ghana for the Tax Year to which the Return relates if according to the Return including the material error or omission by the Company the amount that was unpaid and would have been payable if the return had not contained the error or omission concerned is less than the amount of the liability of the Company to income tax in Ghana for the Tax Year to which the return relates.

39. Failure to keep Records

(1) The Company shall keep and preserve records necessary for the completion of each Return in accordance with paragraph 15(5) and (6).

(2) If the Company fails to comply with subparagraph (1), the Internal Revenue Service may impose on the Company a penalty not exceeding US\$10,000.

40. Failure to Submit a Return in Respect of VAT

(1) The VAT Service may impose in accordance with this Part a fixed penalty payable by the Company to the VAT Service ("Fixed VAT Penalty") if the Company fails to submit a VAT Return on or before the due date for the VAT return.

(2) The Fixed VAT ("Fixed VAT Penalty ") penalty payable under subparagraph (1) shall be:

(a) US\$250, if the VAT return concerned is submitted within 30 days

(b) US\$500, in any other case.

41. Enforcement procedure

(1) In order to impose a Fixed Penalty, a Further Penalty or a Tax-Related penalty on the Company in accordance with the provisions of this Part, the Internal Revenue Service shall serve a written notice on the Company within 6 months of the Filing Date for the return to which the penalty relates.

(2) In order to impose a Fixed VAT Penalty VAT on the Company in accordance with the provisions of this Part, the VAT Service shall serve a notice in writing (a "Notice") on the Company within 3 months of the due date for the VAT Return concerned under paragraph 25(2).

(3) Where the VAT Service serves a Notice upon the Company, it shall specify the grounds for imposing the penalty, the amount of the penalty and the date, which shall be not less than 30 days after the date on which the Notice is received by the Company on which, in the absence of any appeal, the Company is to make payment of the penalty.

PART 7—APPEALS

42. Jurisdiction of Fiscal Review Board

Subject to the Constitution and right to appeal to the WAGP Tribunal as set out below, the Fiscal Review Board has exclusive jurisdiction to hear applications filed by any Applicable Person for review of a decision or action or inaction of Ghana, the Tax Authority of Ghana, any other State Authority or the WAGP Authority in relation to the application of the Agreed Fiscal Regime including Non-WAGP Regime matters which are modified by the implementation of the Agreed Fiscal Regime, including the specific applications set out in this Part.

43. Right of Appeal

(1) Any WAGP Company or any other Applicable Person aggrieved or dissatisfied by a decision or action or inaction of Ghana, the Tax Authority, any other State Authority or the WAGP Authority in relation to the application of the Fiscal Regime as provided in this Act, may,

(a) apply to the Fiscal Review Board for a review of or to appeal against that decision or action or inaction or for a direction to Ghana, the Tax Authority, other State Authority or WAGP Authority in respect of such matter, in accordance with this Part; or

(b) appeal to the WAGP Tribunal as set out in this Part.

(2) The right of appeal or review under this Part extends to all matters covered by the Agreed Fiscal Regime, including Non-WAGP Regime matters which are modified by the implementation of the Agreed Fiscal Regime.

(3) Ghana or a State Authority which is aggrieved or dissatisfied by a decision of the Fiscal Review Board may appeal against the decision of the Fiscal Review Board in accordance with this Part but where the matter being appealed is a matter that arises under Part 2 of this Schedule other than an appeal in relation to the application of paragraphs 4(3) to 4 (8), 21(2), and (7) and 23, then an appeal lies only if all States or the equivalent State Authority in all States join in the appeal.

44. Income Tax

(1) Any Applicable Person dissatisfied with

(a) any Assessment or any amended or altered Assessment issued by a Tax Authority; or

(b) the failure of the Internal Revenue Service to issue an amended Assessment following the submission of amended Returns in accordance with paragraph 17(4)

may appeal to the Fiscal Review Board by written notice to the WAGP Authority, copied to the Internal Revenue Service.

(2) Any Applicable Person dissatisfied with any imposition of a withholding or deduction contrary to 21 (1) and (2) or the failure of any person to treat any withholding in accordance with paragraph 21(7) may appeal to the Fiscal Review Board by notice in writing to the WAGP Authority, copied to the Internal Revenue Service.

(3) The notice must be given

(a) in the case of sub-paragraph (1)(a), within 30 days of the date on which the Assessment, amended Assessment or altered Assessment is issued; or

(b) in the case of sub-paragraph (1)(b) within 135 days of the submission of the amended returns as referred to in paragraph 17(4) or in the case of subparagraph (2) within 30 days of the date on which the Tax Authority seeks to impose the withholding or deduction or the date on which the Tax Authority fails to treat the withholding in accordance with paragraph 21(7).

45. VAT

(1) Any Applicable Person dissatisfied with

(a) any refund of VAT by the VAT Service or any refusal by the VAT Service to make repayment of VAT, in either case including the amount of any interest due; or

(b) any requirement of the VAT Service that VAT be paid or charged;

(c) any refusal in whole or in part by the VAT Service to allow a credit for Tax in respect of VAT paid and not refunded

may appeal to the Fiscal Review Board by written notice to the WAGP Authority, copied to the Commissioner of VAT and to any other State Authority involved.

(2) The notice shall be given within 60 days after the matters giving rise to the dissatisfaction of the Applicable Person come to that Applicable Person's attention.

46. Customs Duties

(1) Any Applicable Person dissatisfied with any imposition of any customs duties pursuant to Part 4 of this Schedule, may appeal to the Fiscal Review Board by written notice to the WAGP Authority, copied to the Commissioner Customs Excise and Preventive Service.

(2) The notice shall be given within 60 days after the date on which the matters giving rise to the dissatisfaction of the Applicable Person came to the Applicable Person's attention.

47. Other Taxes/Discrimination/Non-WAGP Regime

(1) Any Applicable Person dissatisfied with any imposition of any Tax by Ghana or a State Authority contrary to the provisions of the Agreed Fiscal Regime or by the failure of Ghana or a State Authority or the WAGP Authority to comply with the Agreed Fiscal Regime or to correctly apply the Non-WAGP Regime as modified by the implementation of the Agreed Fiscal Regime, may appeal to the Fiscal Review Board by written notice to the WAGP Authority, copied to the Tax Authority and any other relevant State Authority.

(2) The notice must be given within 90 days after the date on which Ghana seeks to impose the tax concerned or the final decision of Ghana or the State Authority which gives rise to the dissatisfaction.

48. Penalties and Interest

(1) Any Applicable Person dissatisfied with the imposition of any penalty under Part 6 of this Schedule or any demand for interest by the Tax Authority under paragraph 20(2) or any refusal of the Tax Authority or the Government of Ghana to pay interest pursuant to paragraph 20(2)

may appeal to the Fiscal Review Board by written notice to the WAGP Authority, copied to the Tax Authority of Ghana.

(2) The notice must be given within 30 days after the date on which the Tax Authority concerned seeks to impose the penalty or the interest or the date on which the interest was due and payable by the Tax Authority.

49. Fiscal Review Board process

(1) The Fiscal Review Board shall conclude, on the basis of the information and evidence submitted to it, what the correct amount of tax due from, or repayment of Tax due to, the Applicable Person should be, upon being satisfied on the balance of probabilities.

(2) A decision of the Fiscal Review Board shall constitute an administrative decision of the Tax Authority concerned.

(3) The decisions of the Fiscal Review Board shall be

(a) binding on the parties to its proceedings; and

(b) recognised as final, effective and immediately enforceable from the date of their notification within the domestic legal and fiscal systems of Ghana and as enforceable against any State Authorities of Ghana to the extent Ghana was a party to or regularly joined in the proceedings, subject to the parties' right to appeal to the WAGP Tribunal as set out below.

50. Right of Appeal or Application to the WAGP Tribunal

(1) The WAGP Tribunal shall have exclusive jurisdiction to hear and determine the appeals and applications reserved for it in this Schedule.

(2) Any party in proceedings before the Fiscal Review Board may apply to the WAGP Tribunal if they are dissatisfied with the findings of the Fiscal Review Board so far as that finding is a finding of law and not a finding of fact.

(3) Whether a finding is a finding of law or of fact shall be the decision of the Fiscal Review Board acting reasonably and in good faith and taking into account the submissions of each party.

(4) Any decision by the Fiscal Review Board as to whether a finding made by it is a finding of law or of fact may be appealed to the WAGP Tribunal by any of the parties before the Fiscal Review Board.

(5) Ghana may also bring an application to the WAGP Tribunal in accordance with paragraph 4(6).

51. WAGP Tribunal Process

(1) The WAGP Tribunal shall conclude, on the basis of the information and findings of fact submitted to them, what the correct amount of tax due from, or repayment of Tax due to, the Applicable Person should be, upon being satisfied on the balance of probabilities.

(2) The WAGP Tribunal shall reach its determination fairly, in accordance with the facts and in accordance with the governing law and all relevant agreements including, the International

Project Agreement and if the WAGP Tribunal is unable to agree unanimously on a decision, a majority decision shall apply and shall be binding on the parties.

(3) The decisions of the WAGP Tribunal shall be binding on the parties to its proceedings, and shall be recognised as final, effective and immediately enforceable as of their notification within the domestic legal and fiscal systems of Ghana and as against any State Authorities of Ghana to the extent Ghana was a party to or regularly joined the proceedings.

52. Procedures

The procedures for the conduct of appeals or applications to the Fiscal Review Board or the WAGP Tribunal shall be as set out in the WAGP Treaty and the Rules of Procedure.

53. General

(1) An Applicable Person who appeals against a liability to tax only in part, shall make payment in respect of the part of the liability to tax that is not disputed and the payment shall be taken into account by the Fiscal Review Board or WAGP Tribunal, in assessing the amount of any liability to tax and interest, if any, due under subparagraphs (5) to (7) following its judgment.

(2) In the conduct of an appeal, a party to the appeal shall not be obliged to disclose any document which it reasonably considers contains legal advice provided by a legal advisor including any legal advisor employed as such by the party in respect of the appeal or otherwise and shall be obliged to disclose only parts of documents where those parts are relevant to the appeal but the party is not obliged to disclose parts which are not or parts which contain legal advice.

(3) Parties to proceedings before the Fiscal Review Board or the WAGP Tribunal shall be free to settle the appeal by agreement of all the parties on terms that they consider appropriate at any time, including during the hearing, in which case the appeal and the hearing shall, to the extent of the settlement, come to an end and no further appeal shall be available.

(4) Any agreement under sub-paragraph (3) shall not be effective until it is recorded in writing signed by the appropriate representative of all the parties.

(5) The Fiscal Review Board and the WAGP Tribunal may in reaching its judgment, grant to a party or parties to the hearing a right to receive from the other party or parties, a payment in respect of the costs of the first party or parties.

(6) The Fiscal Review Board and the WAGP Tribunal may order that Interest is payable at a rate not exceeding the Applicable Rate for any period it considers to be reasonable.

(7) Any amount of costs or interest under subparagraph (5) or (6) received by a party to a proceeding shall not be taxable in the hands of that party and no payment by a party of an amount awarded under those paragraphs shall be deductible as an allowable expense.

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