



**MEMORANDUM TO PARLIAMENT**

**FROM**

**HON. MINISTER FOR FINANCE**

**ON**

**APPROVAL OF THE TERMS AND WAIVER OF THE STAMP DUTY ON  
US\$2,000,000,000 RECEIVABLES-BACKED TRADE FINANCE FACILITY  
FOR THE PURCHASE OF COCOA IN GHANA FOR THE 2014/15 COCOA  
SEASON**

**BY**

**GHANA COCOA BOARD**

**.....15<sup>th</sup>.....JULY, 2014.**

## 1.0 INTRODUCTION

Parliament is invited to consider and approve:

- I. the terms of the Agreement (negotiated Rates in the attachment to this Memorandum) for Two Billion, United States Dollars (US\$2,000,000,000.00 Receivables-Backed Trade Finance Facility; and
- II. the waiver of Stamp Duty on offshore syndicated receivables-backed trade finance facility of US\$2,000,000,000.00 (Two Billion United States Dollars);

His Excellency The President, has granted Executive Approval for the terms of the Loan Agreement and the Waiver of Stamp Duty on the offshore syndicated receivables-backed Trade Finance facility of US\$2,000,000,000.00 (Two Billion United States Dollars) to finance the purchase of cocoa for the 2014/2015 Crop season.

## 2.0 BACKGROUND

The Board of Directors of the Ghana Cocoa Board gave approval for COCOBOD to borrow an amount of Two Billion, United States Dollars for the purchase of cocoa for the 2014/2015 cocoa season.

The offshore syndicated Trade facility is a loan usually sourced by COCOBOD for the purchase of cocoa, and payment of margins to other stakeholders. This financing arrangement was started in 1993. For the 2014/2015 cocoa purchases, several international and local banks ('Consortium') will be involved in arranging the facility. The loan will be used to purchase an estimated 950,000 tonnes (or more) of cocoa beans in the 2014/2015 cocoa season. COCOBOD has also projected the Cedi/dollar exchange rate for the period at GH¢3.22 to US\$1.00.

### 3.0 TREND ANALYSIS OF PREVIOUS FACILITIES

Since 1992/1993, COCOBOD's performance on the international money market has been excellent in terms of borrowing funds to purchase cocoa beans and repayments. Repayments on all facilities arranged have been met on due dates.

The table below shows trend analysis of facilities arranged between 2000/01 and 2013/14.

Crop Year	Facility (US\$M)		Facility Arranger	Margins BP	Nature of collateral	Collateral Provided		Facility Ratio	Success Rate
	Committed	Amount Utilised				Tonnage of Cocoa Collateralized	Value of Collateral		
2000/01	260.00	260.00	Barclays	0.475	Fixed Contracts	299,500.00	286.00	1.1	Excellent
2001/02	300.00	300.00	Barclays	0.525	Fixed Contracts	272,200.00	330.00	1.1	Excellent
2002/03	420.00	420.00	Barclays	0.525	Fixed Contracts	244,300.00	462.00	1.1	Excellent
2003/04	650.00	650.00	Barclays	0.500	Fixed Contracts	324,675.00	715.00	1.1	Excellent
2004/05	850.00	500.00	Barclays	0.400	Fixed Contracts	357,143.00	550.00	1.1	Excellent
2005/06	550.00	550.00	SG	0.325	Fixed Contracts	392,857.00	605.00	1.1	Excellent
2006/07	810.00	810.00	Stanchart	0.200	Fixed Contracts	556,875.00	891.00	1.1	Excellent
2007/08	900.00	900.00	Stanchart	0.160	Fixed Contracts	559,322.00	990.00	1.1	Excellent
2008/09	1,000.00	1,000.00	Stanchart	0.450	Fixed Contracts	461,000.00	1,100.00	1.1	Excellent
2009/10	1,200.00	1,200.00	Stanchart	2.500	Fixed Contracts	441,000.00	1,320.00	1.1	Excellent
2010/11	1,500.00	1,500.00	Calyon	0.900	Fixed Contracts	500,000.00	1,650.00	1.1	Excellent
2011/12	2,000.00	2,000.00	Stanchart	0.650	Fixed Contracts	675,000.00	2,200.00	1.1	Excellent
2012/13	1,500.00	1,300.00	Stanchart	1.250	Fixed Contracts	555,900.00	1,430.00	1.1	Excellent
2013/14	1,200.00	1,200.00	Calyon	0.700	Fixed Contracts	535,900.00	1,320.00	1.1	Excellent

## **4.0 IMPORTANCE OF THE COCOA INDUSTRY**

Over the years, the cocoa industry has played a pivotal role in the economic development of the country by contributing to the gross domestic product (GDP), employment generation, and being a major source of Ghana's foreign exchange earnings. The cocoa sector also contributes to government revenue in the form of export duty, and support infrastructural development, among others. Most of the foreign exchange earnings from cocoa are retained in the country for the country's developmental needs and boost foreign exchange reserves of the country.

Production reached an all-time high of over 1.0 million metric tonnes in the 2010/11 cocoa season. Average cocoa production has since been approximately 857,383 metric tonnes per year. Cocoa production is forecasted to be 950,000 metric tonnes in the 2014/2015 crop year.

## **5.0 JUSTIFICATION**

The Trade Facility is to enable COCOBOD raise adequate funds to purchase cocoa beans from farmers through licensed buying companies for the 2014/2015 cocoa season.

The sourcing of the facility also provides the nation with the opportunity to demonstrate its good track record on borrowing from the international financial markets.

## **6.0 WAIVER OF STAMP DUTY**

Section 32(6) of the Stamp Duty Act, 2005 (Act 689) makes it imperative to stamp a loan document at 1% of the facility. The Minister for Finance, in consultation with the Commissioner for the Domestic Tax Revenue Division (DTRD) of the GRA, acting for the Commissioner General, has assessed the stamp duty of US\$20,000,000.00 (Twenty Million Dollars) on the Facility and, accordingly, given interim waiver of the assessed Stamp Duty. This, together with the terms of

the loan facility, are pending final approval by Parliament as permitted under Section 36 of the Stamp Duty Act.

## 7.0 ACTION REQUIRED

In line with Section 24 of the Cocoa Board Act 1984 (PNDCL.81) and, in compliance with Article 181 and 174 (2) of the Constitution, Parliament is kindly requested to approve:

- i. The Terms of the Agreement and Waiver of Stamp Duty on the facility to enable COCOBOD secure US\$2.0 billion syndicated loan from the international financial market for cocoa purchases in the 2014/2015 cocoa season.

Parliament's approval of the facility and the waiver of the necessary taxes and duties is therefore, respectfully being requested.

## 8.0 ATTACHMENTS

The following documents are, hereby, attached for the perusal of Honourable Members:

1. Executive Approvals for the Terms of the Agreement and Waiver of Stamp Duty on the facility;
2. Terms of the Agreement;
3. Assessment of Stamp Duty and Interim Waiver by the Ghana Revenue Authority
4. Relevant Section(s) of the Stamp Duty Act;
5. Relevant Section of the Ghana Cocoa Board Act, 1984 (PNDCL81), Section 24. And
6. The draft agreement is also available for perusal if required.



HON. SETH E. TERKPER  
MINISTER

.....<sup>15<sup>th</sup></sup> July 2014.

In use of reply the  
number and date of this  
letter should be quoted.

CONFIDENTIAL



OFFICE OF THE PRESIDENT

P.O. BOX 1627

ACCRA


15<sup>TH</sup> JULY, 2014

My Ref. No. OP/CA.1/V.5  
Your Ref. No. ....

REQUEST FOR EXECUTIVE APPROVAL FOR THE TERMS AND  
THE WAIVER OF THE STAMP DUTY OF US\$20,000,000.00 ON  
US\$2,000,000,000.00 RECEIVABLES-BACKED TRADE FINANCE  
FACILITY FOR THE PURCHASE OF COCOA IN GHANA FOR THE  
2014/2015 COCOA SEASON

I refer to your letter N0.MOF/TA/COCOBOD/11/13 dated 15<sup>th</sup> July, 2014 on the above-mentioned subject.

2. H.E. the President has granted Executive Approval for waiver of the stamp duty of an amount of Twenty Million United States Dollars (US\$20,000,000.00) in respect of an offshore syndicated receivables-backed Trade Finance facility of Two Billion United States Dollars (US\$2,000,000,000.00) to finance the purchase of cocoa for the 2014/2015 crop season.
3. I should be grateful if you could take requisite action on the decision in paragraph (2) above.
4. This letter supercedes my letter No. OP/CA.1/V.5 dated 11<sup>th</sup> July, 2014.

  
ROGER K. ANGSOMWINE  
SECRETARY TO THE CABINET

HON. MINISTER FOR FINANCE

cc: Chief of Staff  
The Secretary to H.E The Vice President  
The Secretary to H.E The Vice President

In case of reply the number and date of this letter should be quoted.

CONFIDENTIAL

OFFICE OF THE PRESIDENT

P.O. BOX 1627

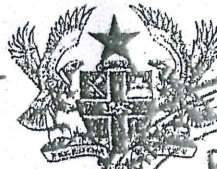
ACCRA

My Ref. No. ....

OP/CA/1/V.5

Your Ref. No. ....

FREEDOM AND JUSTICE




15<sup>TH</sup> JULY, 2014

REQUEST FOR EXECUTIVE APPROVAL FOR THE TERMS AND THE WAIVER OF THE STAMP DUTY ON US\$2,000,000,000.00 RECEIVABLES-BACKED TRADE FINANCE FACILITY FOR THE PURCHASE OF COCOA IN GHANA FOR THE 2014/2015 COCOA SEASON

I refer to your letter N0.MOF/TA/COCOBOD/11/13 dated 15<sup>th</sup> July, 2014 on the above-mentioned subject.

2. H.E. the President has granted Executive Approval for an offshore syndicated receivables-backed Trade Finance facility of Two Billion United States Dollars (US\$2,000,000,000.00) to finance the purchase of cocoa for the 2014/2015 crop season.
3. I should be grateful if you could take requisite action on the decision in paragraph (2) above.
4. This letter supercedes my letter No. OP/CA.1/V.5 dated 11<sup>th</sup> July, 2014.

  
ROGER K. ANGSOMWINE  
SECRETARY TO THE CABINET

HON. MINISTER FOR FINANCE

cc: Chief of Staff  
The Secretary to H.E The Vice President  
The Secretary to H.E The Vice President

GHANA COCOA BOARD		Winning Group: Barclays Bank PLC, Commerzbank, Aktiengesellschaft, Deutsche Bank AG, KfW IPEX-Bank GmbH and Natixis		
2014/2015 PRE-EXPORT TRADE FINANCE FACILITY		EVALUATION OF BIDS FOR ANNUAL FACILITY		
DESCRIPTION		FACILITY AMOUNT =\$1.6bn COST (USD)	FACILITY AMOUNT =\$1.8bn COST (USD)	FACILITY AMOUNT =\$2.0bn COST (USD)
INTEREST AMOUNT	*LIBOR +0.60	6,062,857.14	6,820,714.29	7,071,904.76
COMMITMENT FEES	35% on interest margin	429,333.33	483,000.00	572,833.33
ARRANGEMENT/PARTICIPATION FEES	0.575% Flat	9,200,000.00	10,350,000.00	11,500,000.00
LEGAL FEES	ESTIMATED	75,049.60	75,049.60	75,049.60
AGENCY FEES	NIL			
OTHER COSTS/AGENCY	NIL			
ESTIMATED TOTAL COST		15,692,190.48	17,728,763.89	19,219,787.70

Security margin: Assignment of cocoa contracts for 110% of Facility Amount

Underwriting level: USD1.6 billion fully underwritten

\*Monthly LIBOR varies and presently an average of 0.2 is estimated for the period



# GHANA REVENUE AUTHORITY

DOMESTIC TAX REVENUE DIVISION



OFFICE OF THE COMMISSIONER  
DOMESTIC TAX REVENUE DIVI  
P.O. BOX 2202,  
ACCRA, GHANA.  
Tel. No. 0302 67 57 14  
Fax No. 0302 66 58 33

Our Ref. No. DTRD/.....

Your Ref. No. ....

July 15, 2014

The Hon. Minister,  
Ministry of Finance,  
P.O. Box MB40,  
Accra.

Dear Sir,

**SYNDICATED LOAN AGREEMENT RELATING TO US\$2,000,000,000.00  
RECEIVABLES-BACKED TRADE FINANCE FACILITY**

**REQUEST FOR ASSESSMENT AND INTERIM WAIVER OF  
PAYMENT OF STAMP DUTY**


We acknowledge receipt of your letter no. MOF/TA/COCOBOD/7/14 dated July 15, 2014 on the above subject.

The Stamp Duty payable on US\$2,000,000,000.00 is twenty million US Dollars (US\$20,000,000.00) i.e. US\$2,000,000,000.00 at 1% = US\$20,000,000.00.

The interim waiver of the Stamp Duty of US\$20,000,000.00 is granted pending Parliamentary approval as is required under Section 36 of the Stamp Duty Act 689.

Yours faithfully,

For: **COMMISSIONER-GENERAL**

  
**COMFORT BOOHEHENE OSAFO (MRS.)**  
**COMMISSIONER**  
**DOMESTIC TAX REVENUE DIVISION**

cc: Sec. to the President, Office of the President.  
Sec. to the Cabinet, Office of the President.  
Hon. Deputy Minister (F)  
Chief Director, Ministry of Finance  
Chief Executive, Ghana Cocoa Board  
Commissioner-General (GRA)

Integrity Fairness S



# GHANA COCOA BOARD ACT 1984 (PNDCL 81)

## Section 24-Bank accounts and borrowing powers

- 1) The Board may have bank accounts determined by the directors.
- 2) Subject to any other enactment, the Board may open and operate foreign exchange accounts including accounts outside the Republic into which shall be paid not less than five percent of its earnings to the Republic through the export of Ghana cocoa and any other agricultural products and derived from the operations of the Board under this Act.
- 3) Subject to article 181 of the Constitution and in compliance with clause (4) of that article, the Board may obtain loans and other credit facilities on the guarantee of the Government from banks approved by the Minister responsible for Finance.
- 4) In addition to the powers of the Board under subsection (3), the Board may, with the approval of the Minister responsible for Finance, borrow from any other source.
- 5) The Board may borrow temporarily by way of overdraft or otherwise, the sums of money that it requires for meeting its current obligations or performing its functions.
- 6) The Minister responsible for Finance may, on behalf of the Government, guarantee the performance of an obligation or undertaking of the Board under this Act.
- 7) The Minister responsible for Finance may, in consultation with the Minister, prescribe the maximum sums of money which the Board may borrow under this Act.
- 8) Loans derived whether from outside or within the Republic as well as the agreements providing for joint ventures involving the Board shall be subject to clause (4) of article 181 of the Constitution.

## ARRANGEMENT OF SECTIONS

*Section**Provisions applicable to instruments generally*

1. Charge of duties in Schedule
2. Instruments to be separately charged with duty
3. Assessment of duty
4. Impressed and adhesive stamp
5. Instruments written on stamped material
6. Circumstances affecting duty to be set out in instruments
7. Mode of calculation of ad valorem duty in certain cases
8. Cancellation of adhesive stamps
9. Denoting stamp
10. Commissioner may be required to express opinion
11. Instruments to be stamped as assessed

*Stamping of instruments after execution*

12. Stamping of instruments after execution

*Particulars about land*

13. Particulars about land
14. Instruments and title registered in the land or [title registry]

*Provisions applicable to particular instruments*

15. Calculation of ad valorem duty in respect of stock and securities
16. Calculation of ad valorem duty on periodical payments
17. Calculation of ad valorem duty on mortgage or conveyance in respect of a debt.
18. Direction as to duty in certain cases
19. Conveyance other than a sale
20. Stamp duty on gifts inter vi vas
21. Stamping of duplicates and counterparts
22. Agreement chargeable as lease
23. Certain covenants not to increase duty
24. Cancellation of stamps on memorandum of hypothecation
25. Stamping of mortgages
26. Mortgages for undefined amounts

(2) The Commissioner shall make a determination on an objection lodged against an assessment within twenty one days from the date of receipt of an objection to the assessment.

(3) The Commissioner may, in the determination of the objection, allow the objection in whole or in part and amend the assessment accordingly or disallow the objection.

**Appeal against an assessment**

31. (1) A person who is dissatisfied with the decision of the Commissioner on an objection may within thirty days from the date of the decision and after payment of the duty in conformity with the assessment, appeal against the decision to the High Court.

(2) Order 54 of the High Court Civil Procedure Rules shall apply to an appeal under subsection (1).

(3) The Commissioner or the appellant may appeal against the decision of the High Court to the Appeal Court on a matter of law only.

**Admissibility of insufficiently stamped or unstamped instrument**

32. (1) Where an instrument chargeable with a duty is produced as evidence

(a) in a court in a civil matter; or

(b) before an arbitration or referee,

the judge, arbitrator or referee, shall take notice of an omission or insufficiency of the stamp on the instrument.

(2) If the instrument is one which may legally be stamped after its execution, it may, on payment of the amount of the unpaid duty to the registrar of the Court or to the arbitrator or referee, and the penalty payable on stamping that instrument, be received in evidence subject to just exceptions on other grounds.

(3) An instrument which is sufficiently stamped under this Act shall be receivable in evidence although that instrument may not have been stamped or is insufficiently stamped according to the law in force in the place where that instrument was executed.

(4) The registrar, arbitrator or referee shall

(a) give a receipt for moneys paid as duty or penalty;

(b) make an entry in a book kept for recording payment of stamp duty and any penalties; and

(c) communicate to the Commissioner, the

(i) title of the proceeding in which; and

(ii) name of the party from whom, the registrar, arbitrator or referee received the duty and penalty.

(5) On the production to the Commissioner of an instrument in respect of which duty or a penalty has been paid under this section, together with the receipt of the registrar, arbitrator or referee, the payment of the duty shall be denoted on the instrument by an impressed stamp and the payment of the penalty shall also be denoted by a certificate signed and sealed by the Commissioner.

(6) Except as expressly provided in this section, an instrument

(a) executed in Ghana; or

(b) executed outside Ghana but relating to property situate or to any matter or thing done or to be done in Ghana ~

shall except in criminal proceedings, not be given in evidence or be available for any purpose unless it is stamped in accordance with the law in force at the time when it was first executed.

### *Proceedings*

#### Compounding offences

33. (1) Where a person commits an offence under this Act, other than an offence referred to in section 42, the Commissioner may at any time prior to the commencement of court proceedings, compound the offence and order the person to pay a sum of money specified by the Commissioner but the sum shall not exceed the amount of the fine prescribed for the offence.

(2) The Commissioner may only compound an offence under this section if the person concerned admits in writing to the Commissioner of the commission of the offence.

(3) Where the Commissioner compounds an offence under this section, the order

(a) shall

- (i) be in writing and specify the offence committed; state
- (ii) the sum of money to be paid;
- (iii) state the date for payment; and
- (iv) have attached, the written admission referred to in subsection (2);

(b) shall be served on the person who committed the offence;

(c) shall be final and not subject to an appeal; and

(d) may be enforced in the same manner as a decree of a court for the payment of the amount stated in the order or this Act.

(4) Where the Commissioner compounds an offence under this section, the person concerned is not liable to prosecution or a penalty under this Act in respect of that offence.

#### Venue for trial

##### 34. Any

(a) offence committed by a person under this Act; or

(b) civil proceedings under this Act in relation to a person,

shall be instituted, tried, heard, disposed of and the person punished, as the case requires, at the court nearest to that person's usual place of residence or at a court with jurisdiction over the area in which the office of the Service which has primary responsibility for that person's affairs under this Act is situated.

#### Amounts payable

35. (1) The institution of proceedings for a penalty or fine or the imposition of a penalty or fine under this Act shall not relieve a person from liability to pay duty which may include an amount treated by this Act as duty, for which the person is or may become liable under this Act.

(2) In proceedings under this Act, the production of a certificate signed by the Commissioner stating the name and address of a person liable and the amount of duty due or due and payable by the person is sufficient evidence of the amount of duty due or due and payable by that person.

#### Waiver or variation of duty

36. The Minister responsible for Finance in consultation with the Commissioner may, subject to the prior approval of Parliament by resolution in accordance with clause (2) of article 174 of the Constitution, grant a waiver or variation of duty imposed by this Act in favour of a person or an authority.

#### Deferment of duty due

37. (1) Where the Commissioner is of the opinion that the whole or part of the duty which is due by a person, including an amount considered as duty by this Act cannot be effectively recovered immediately by reason of the financial hardship that may be caused to the person, the Commissioner may on an application made to the Commissioner by the person,

(a) defer payment of the whole or part of the duty; and

(b) arrange a satisfactory payment schedule not exceeding six months at any particular time, with that person.

(2) The Commissioner shall denote on the instrument presented that either the whole or part of the duty due has been deferred and shall state the outstanding duty due.